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Washington

1945

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Rulings and Interpretations under the
Walsh-Healey Public Contracts Act.

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UNITED STATES DEPARTMENT OF LABOR
FRANCES PERKINS, SECRETARY

DIVISION OF PUBLIC CONTRACTS
L. METCALFE WALLING, Administrator

Rulings and Interpretations
under the
Walsh-Healey Public Contracts Act

Public, No. 846, Seventy-fourth Congress
Approved June 30, 1936

RULINGS AND INTERPRETATIONS No. 1



UNITED STATES
GOVERNMENT PRINTING OFFICE
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JULY 6, 1937.

NOTICE

The following document represents an analysis of Public Act No. 846, Seventy-fourth Congress, of the Regulations of the Secretary of Labor, issued pursuant thereto and of the opinions of the Comptroller General on that Act, as well as a collection of the major rulings and interpretations adopted under the Act as of the date hereof. All prior rulings and interpretations inconsistent herewith are superseded by these. From time to time, amendments or additions to this statement will be released through the office of the Administrator of the Division of Public Contracts, Department of Labor.

While all such rulings and interpretations may be quoted for official use, all requests for further rulings and interpretations must be submitted to the Division of Public Contracts, Department of Labor, Washington, D. C.

BASIC LABOR STANDARDS REQUIRED BY THE PUBLIC CONTRACTS ACT

The Public Contracts Act sets standards of minimum wages, maximum hours, child labor, convict labor, and safety and health for the performance of Government contracts in excess of \$10,000.

The minimum wages required are those which have been determined by the Secretary of Labor for specific industries. As these determinations are made, they will be mentioned in the specifications and invitations for bids. Unless so mentioned, no minimum wage is required.

The basic hours of work are 8 in any 1 day or 40 in any 1 week. Overtime, however, is permitted provided that time and one-half is paid. An employee engaged on Government work is entitled to time and one-half for all overtime in excess of 8 hours in any 1 day or 40 hours in any 1 week, even though part of those periods and all of the overtime are devoted to commercial work.

Child labor of boys under 16 and girls under 18 years of age is prohibited.

All convict labor is prohibited.

Conditions of safety and health are required. The approval of the State inspector is prima-facie evidence of compliance with this requirement.

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Rulings and Interpretations Under the Walsh-Healey Public Contracts Act

Section 1.—CONTRACTS

1. COVERAGE

The Public Contracts Act applies to "any contract made and entered into by any executive department, independent establishment, or other agency or instrumentality of the United States, or by the District of Columbia, or by any corporation all the stock of which is beneficially owned by the United States (all the foregoing being hereinafter designated as agencies of the United States), for the manufacture or furnishing of materials, supplies, articles, or equipment in any amount exceeding \$10,000."—The Act, section 1.

2. ASSEMBLING

A contract for an article which is produced by assembling miscellaneous parts purchased by the contractor from others is a contract to manufacture an article in the sense in which that term is used in the Public Contracts Act.

3. CONSTRUCTION

a. General.

Construction contracts are not subject to the Public Contracts Act.

b. Erection or installation.

Contracts for the erection or installation of materials and equipment may be either construction contracts or manufacturing contracts, depending largely upon the place where the work is performed. If most of the work is done at the site of the erection or installation, the contract should be regarded as a construction contract; however, if most of the work is done in a shop or factory away from the place of use, the contract should be regarded as a manufacturing contract. If there is any doubt concerning the classification of such contracts, the matter should be referred to the Department of Labor for decision.

c. Boats.

Contracts for the production or repair of vessels or large floating stock are not subject to the Act. However, contracts to manufacture

or furnish small unregistered boats such as canoes, rowboats, and launches are contracts for the furnishing of equipment and therefore subject to the Act.

4. PERSONAL SERVICES

A contract exclusively for personal services is not covered by the Act; however, a contract in which services are incidental to or are an integral part of the manufacture or furnishing of materials, supplies, articles, or equipment is subject to the Act.

The following contracts have been held to be outside the Act:

(a) Laundry and dry cleaning contracts.

The following contracts have been deemed to fall within the provisions of the Act:

(a) Contracts for photographic reproductions of patent designs.

(b) Contracts for the tabulation of social-security records.

(c) Contracts for books, periodicals, magazines, newspapers, and the printing of briefs.

5. RENTAL CONTRACTS

Contracts for the rental of personal property such as calculating machines and furniture are subject to the Act. Contracts for the rental of real property such as lands and offices are not.

Contracts strictly for the lease of a particular article should be distinguished from contracts for the doing of particular work in which the contractor is to employ his own equipment. The former contract is within the terms of the Act, while the latter is essentially a service contract and is exempt from the Act.

6. SPECIFIC INDUSTRIES

a. Books and printing.

Contracts for books, periodicals, magazines, newspapers, and printing of briefs come within the provisions of the Act unless the purchase may be made by the Government on the open market.

7. MONEY INVOLVED

a. In excess of \$10,000.

(1) Indefinite amount.

All contracts which may exceed \$10,000 should include the stipulations required by the Act unless the contracting officer knows in advance that the total amount of the contract will not exceed \$10,000 in any event.

(2) Reduction for prompt payment.

In the event that a contract were to be awarded in excess of \$10,000 the stipulations required by the Act should be included, notwithstanding the fact that prompt payment would reduce the actual expenditure below the \$10,000 limit. "The total price named in the contract is the contract price insofar as application of the said act is concerned, any reduction therein being dependent upon a condition subsequent to the contract."—16 Comp. Gen. 583; 16 Comp. Gen. 605

(3) Trade-in allowance.

Trade-in allowances should not be deducted from the bid price in determining whether the contract is in excess of \$10,000. The contract price rather than the means of payment is the controlling factor.—16 Comp. Gen. 605.

(4) Installment delivery.

Indefinite contracts which may exceed \$10,000 come within the Act irrespective of whether the material is delivered in installments or in one lot.

b. Less than \$10,000.

(1) Contracts for separate items.

When an invitation is issued for bids on a variety of items totaling \$10,000, subject to the Act, and bidders are permitted to bid on any one or more of the items amounting to less than \$10,000; awards made to different bidders for less than \$10,000 are exempt from the terms of the Act.

(2) Low bid on a few items.

When a person bids on several items of equipment of an aggregate value in excess of \$10,000 and is the low bidder on only a few items of an aggregate value below \$10,000, his contract for those few items is not subject to the Act.—16 Comp. Gen. 744.

(3) Manufacturer under regular dealer.

Manufacturers, producing under a contract awarded to a regular dealer subject to the Public Contracts Act and delivering directly to the Government, are also subject to the Act even though they are supplying goods amounting to less than \$10,000.

8. PLACE OF PERFORMANCE

Contracts which are to be performed outside the United States are exempt from the provisions of the Act except where such performance requires a shipment from within the geographic limits of the United States, its Territories, and the District of Columbia.

Section 2.—CONTRACTORS

1. PRIMARY CONTRACTORS

a. The Act.

The Public Contracts Act requires that every contractor be "a manufacturer of or a regular dealer in the materials, supplies, articles, or equipment to be manufactured or used in the performance of the contract."—The Act, section 1 (a).

b. Manufacturer.

A "manufacturer" is a person who owns, operates, or maintains a factory or establishment that produces on the premises the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.—Regulations, article 101 (a).

(1) Assembler.

A contractor who produces an article by assembling miscellaneous parts, all or some of which may have been purchased from others, is a manufacturer within the contemplation of the Act.

c. Regular dealer.

(1) Definition.

"A regular dealer is a person who owns, operates, or maintains a store, warehouse, or other establishments in which the materials, supplies, articles, or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and sold to the public in the usual course of business."—Regulations, article 101 (b).

(2) Brokers.

A broker who does not possess the qualifications of a "regular dealer" as defined in the Regulations of the Secretary is not entitled to the award of a Government contract under the Act, unless he bids in the name of his principal.

2. SECONDARY CONTRACTOR

a. Subcontractor under manufacturer.

If a contract is awarded to a manufacturer subject to the Act and in the normal course of business, the manufacturer purchases supplies or materials which are used in manufacturing the commodity required by the Government, the work performed by the vendor of such supplies and materials and his employees is not subject to the Act.

The one exception to this rule is that under section 1 (c) of the Public Contracts Act the manufacturer agrees that any part of the

work performed under the contract will not be under working conditions which are insanitary or hazardous or dangerous to the health and safety of the employees involved.

b. Substitute manufacturer.

When a manufacturer undertakes a contract subject to the Act he assumes an obligation to produce the commodities required under the labor standards of that Act. He may not relieve himself of this obligation merely by shifting the work to another.

c. Manufacturer under regular dealer.

"Whenever a dealer, to whom a contract within the Act and Regulations has been awarded, causes a manufacturer to deliver directly to the Government the materials, supplies, articles, or equipment required under the contract, such dealer will be deemed the agent of the manufacturer in executing the contract. As the principal of such agent the manufacturer will be deemed to have agreed to the stipulations contained in the contract."—Regulations, article 104.

(1) If a contract for several items aggregating more than \$10,000 is awarded to a regular dealer subject to the Public Contracts Act and he arranges with a manufacturer to produce and ship directly to the Government an item involving less than \$10,000, the manufacturer will still be bound by the stipulations contained in the regular dealer's contract.

Section 3.—EMPLOYEES

1. GENERAL RULINGS AND INTERPRETATIONS

a. The Regulations.

"The stipulations shall be deemed applicable only to employees engaged in or connected with the manufacture, fabrication, assembling, handling, supervision, or shipment of materials, supplies, articles, or equipment required under the contract and shall not be deemed applicable to office or custodial employees."—Regulations, article 102.

b. General interpretation.

The employees not covered by the provisions of the Act fall within three groups:

(a) Those who are not engaged in the performance of the Government contract.

(b) Those engaged exclusively in office work, and

(c) Those engaged exclusively in custodial work.

The following constructions placed upon classes of employees must not be regarded as applicable to all industries or to all employees bearing a certain title. The status of each employee must be judged

separately from the particular work performed by him. The determination as to whether or not a specific employee falls within an exempt classification is a question for decision by the Department of Labor in the light of the specific circumstances surrounding the employment of the given individual.

c. Workers not engaged on Government work.

The following employees have been construed to be outside the Act:

(a) Employees on commercial work when such employees are actually segregated and when separate records are kept for employees on Government work.

(b) Research workers engaged in general experiments not specifically involved in the productive process.

(c) Such employees as foremen, performing no manual operation and having no direct contact with goods or equipment involved in the performance of the Government contract.

(d) Outside crews.

(e) Service and repair men.

(f) Instructors who do not handle the machines or materials involved in the production of the Government goods.

d. Workers engaged on Government work.

The following employees have been construed to be employees engaged in or connected with the Government contract:

(a) Apprentices and learners employed on Government work.

(b) If no separate records for employees engaged on Government work are maintained, all employees in the plant are presumed, until affirmative proof is presented to the contrary, to be engaged on Government work.

(c) Technical workers, such as laboratory technicians and draftsmen, closely associated with the productive processes involved in the manufacture of goods or commodities required by the Government.

e. Office employees.

Office employees are those engaged exclusively in office work relating generally to the operation of the business and not engaged in the production of the materials, supplies, articles, or equipment required by the Government contract.

f. Custodial employees.

Custodial employees are those whose duties are directed to the maintenance of the plant and equipment and who do not perform work on the commodities required by the Government.

(1) The following employees have been construed to be custodial employees:

(a) Electricians.

(b) Engineers.

(c) Firemen.

(d) Repair shop crews.

(e) Watchmen.

(f) Maintenance men.

(2) The following employees have been construed not to be custodial employees:

(a) Shipping crews.

2. SPECIFIC INDUSTRY RULINGS AND INTERPRETATIONS

a. Drug clerks and dye mixers.

Drug clerks or employees engaged in mixing the formulas which form the mixture for the dyes which go into the printing of fabrics under Government contracts are employees manually engaged in manufacture. Since their duties are so directly connected with the processing of the finished materials, they must be classed as productive employees rather than office or custodial employees, and consequently are subject to the provisions of the Public Contracts Act.

b. Service-station operators.

The Public Contracts Act does not apply to distributors and operators of service stations not owned by the company who fall within the category of independent contractors and who make delivery of an oil company's products to governmental agencies for the company's account.

c. Crude-oil production.

In contracts for the delivery of crude oil where the contractor is a producer, the Act covers the employees engaged in extracting the oil and preparing it for shipment.

d. Refined-oil production.

In contracts for gasoline, kerosene, benzene, fuel oil, and other petroleum products in which the contractor is a refiner, the Act applies to employees engaged in manufacturing; i. e., the employees at the refinery engaged in the refining processes and preparing the oil for shipment.

e. Oil-dealer's employees.

Where the contractor is a dealer the Act applies to employees at terminals, warehouses, and bulk storage tanks, including warehousemen, compounders, and chemists testing the lot out of which the Government order is filled, and the crews engaged in loading the material in vessels, tank cars, or tank wagons for shipment.

f. Cotton-textile employees.

In the case of contractors who are manufacturers in the cotton-textile industry, the following groups of employees: repair-shop crews, engineers, electricians, firemen, office and supervisory staffs, watching, outside crews, and cleaners, are not subject to the Act.—Secretary of Labor's decision, October 15, 1936.

g. Motor truck and tractor employees.

When the contractor is a manufacturer of trucks the Act does not apply to those employees engaged in the distribution of the product such as employees in branch warehouses and service stations engaged in maintaining stocks for repairs and in performing repair services for trucks.

Section 4.—WAGES

1. GENERAL PROVISIONS

"All persons employed by the contractor in the manufacture or furnishing of the materials, supplies, articles, or equipment used in the performance of the contract will be paid, without subsequent deduction or rebate on any account, not less than the minimum wages as determined by the Secretary of Labor to be the prevailing minimum wages for persons employed on similar work or in the particular or similar industries or groups of industries currently operating in the locality in which the materials, supplies, articles, or equipment are to be manufactured or furnished under the contract: *Provided, however,* That this stipulation with respect to minimum wages shall apply only to purchases or contracts relating to such industries as have been the subject matter of a determination by the Secretary of Labor."—Regulations, article 1 (b).

"Until a determination of the prevailing minimum wage for a particular industry or group of industries has been made by the Secretary of Labor prior to the invitation for bids, the stipulation with respect to wages in section 1 (b) of the Act will be inoperative, as provided in article 1 (b) of these Regulations.

"Determinations of prevailing minimum wages or changes therein will be published in the Federal Register and sent to contracting officers through circular letters of the Procurement Division of the Treasury. Such determinations will be effective upon the dates fixed therein."—Regulations, article 1101.

2. GOVERNMENT AND PRIVATE CONTRACTS

An individual engaged in the performance of a Government contract subject to the Public Contracts Act is entitled to the required minimum wage for the week in which any Government work was performed by him even though he may have been assigned to commercial work during part of that period.

3. WAGES DETERMINED

a. Work-garment industry.

It is my determination, pursuant to the provisions of the section 1 (b) of the Public Contracts Act, that the minimum wage for employees of contractors with the Government engaged in the manufacture of overalls, unionalls, service uniforms, work pants, and work coats made of khaki, denim, drills, twills, cottonades, ducks, corduroys, or other fabrics in whole or in part of cotton under contracts subject to the provisions of the Public Contracts Act of June 30, 1936, shall be \$15 per week for a week of 40 hours, or 37½ cents per hour. This determination shall be effective and the minimum wage hereby established shall be included in all contracts of this class invitations to bid on which are issued on or after 10 days from the date hereof.—(Signed) Frances Perkins, January 30, 1937.

4. OVERTIME

a. General regulations.

"Employees engaged in or connected with the manufacture, fabrication, assembling, handling, supervision, or shipment of materials, supplies, articles, or equipment used in the performance of the contract may be employed in excess of 8 hours in any 1 day or in excess of 40 hours in any 1 week, provided such persons shall be paid for any hours in excess of such limits the overtime rate of pay which has been set therefor by the Secretary of Labor.

"Until otherwise set by the Secretary of Labor the rate of pay for such overtime shall be one and one-half times the basic hourly rate or piece rate received by the employee.

"If in any 1 week or part thereof an employee is engaged in work covered by the contractor's stipulations, his overtime shall be computed after 8 hours in any 1 day or after 40 hours in any 1 week during which no single daily total of employment may be in excess of 8 hours without payment of the overtime rate."—Regulations, article 103.

b. On Government plus commercial work.

(1) When an employee is engaged on Government work subject to the provisions of the Public Contracts Act, he is entitled to time

and a half for all overtime in excess of 8 hours in any 1 day or 40 hours in any 1 week, even though part of those periods was devoted to commercial work.

(2) If an employee works Monday morning on a Government contract subject to the Act, he is entitled to time and a half for all time in excess of 8 hours on that Monday or in excess of 8 hours on any of the 6 succeeding days, or in excess of 40 hours in the 7-day period commencing Monday morning, regardless of the kind of work performed during the remainder of that week.

(3) If a pay-roll period runs from Monday through Sunday and an employee starts on Government work subject to the Act Wednesday morning, the employer may elect to follow his usual pay-roll week or to adopt a new week commencing Wednesday morning and ending Tuesday evening. In either event all time over 40 hours in the accepted work week must be considered overtime.

c. On weekly or monthly salaries.

The fact that certain employees are paid on a weekly or monthly basis does not affect their right to overtime payment at one and one-half times their basic hourly rate.

Section 5.—DEDUCTIONS AND REBATES

1. GENERAL

Section 1 (b) of the Public Contracts Act requiring the payment of the minimum wages prescribed by the Secretary of Labor "without subsequent deduction or rebate on any account" forbids any practice reducing the net wage below the established minimum. This includes among other deductions for:

- (a) Community-chest contributions.
- (b) Group-insurance premiums.
- (c) "Kick-backs."
- (d) Medical expenses.
- (e) Rent.

The Act, however, does not forbid these deductions as long as the net wage of the employee does not fall below the established minimum wage.

2. SOCIAL SECURITY AND TAXES

Deductions required by the Federal Social Security Act and other taxing laws are not rebates of the kind referred to in article 1 (b) of the Act, since these deductions are made pursuant to law through employers as collecting agents.

3. GARNISHMENTS

There being a wide variation in the garnishment laws of the several States, no comprehensive statement can be made applicable to all of those laws. Inasmuch as the Public Contracts Act may be construed to guarantee a payment of minimum wages to employees affected, in the case of garnishment proceedings the correct procedure is probably for the garnishee to hold aside the funds, file an answer, and at the same time file a special plea, setting out the circumstances in detail and the condition in which he is placed by the Public Contracts Act. It will then be for the local court to determine the employer's responsibility.

Section 6.—HOURS

1. REGULAR DAY AND WEEK

a. Time of commencement.

The work day and week of an employee engaged on governmental work subject to the Act may be deemed to start at any time when the employee commences to work on the Government contract. However, if the contractor desires to maintain his usual timekeeping and pay-roll procedure, he may elect to calculate the hours of work from the first hour of his usual work week rather than from the hour of the commencement of work on the Government contract.

b. Days of the week.

The Act merely requires that persons directly connected with Government-contract work shall not work more than 8 hours in any 1 day or 40 hours in any 1 week but does not specify which days may be work days. There is no prohibition in the Act against work on Sundays or holidays; other Federal, State, and local laws pertaining to Sunday or holiday work, however, may be applicable.

c. Period of instruction.

Generally, in the employment of apprentices, the period of instruction must be considered in the computation of hours of employment. If the apprentice is employed on Government-contract work under the Public Contracts Act, he is entitled to overtime pay for all the time his attendance and effort are required in excess of 8 hours in any 1 day or 40 hours in any 1 week.

2. OVERTIME

Overtime shall be computed as all time worked in excess of 8 hours in any 1 day or 40 hours in any 1 week.

Section 7.—CHILD LABOR

1. IN GENERAL

"No male person under 16 years of age, and no female person under 18 years of age will be employed by the contractor in the manufacture or production or furnishing of any of the materials, supplies, articles, or equipment included in the contract."—The Act, section 1 (d).

2. PARTIAL EXEMPTION IN COTTON-TEXTILE MANUFACTURING

I hereby grant, until further ordered, an exemption from the application of section 1 (d) and section 2 of the Public Contracts Act, Public, No. 846, Seventy-fourth Congress, and from the relevant regulations prescribed by me in part 1, article 1, paragraphs (d) and (f) of the Regulations dated September 14, 1936, with respect to the employment by contractors who are manufacturers in the cotton-textile industry of girls between the ages of 16 and 18 years subject to the following conditions:

1. That no girl under 16 years of age shall be employed.
2. That no girl under 18 years of age not in the employ of the contractor on October 15, 1936, shall be employed during the term of the contract.
3. That no girl under 18 years of age shall be employed between the hours of 7 p. m. and 6 a. m.
4. That no girl under 18 years of age shall be employed at any operation or occupation hazardous in nature or dangerous to health.
5. That for every girl under the age of 18 years now employed, the contractor shall obtain and keep on file evidence showing that the girl is at least 16 years of age.
6. That a specific and positive luncheon period of at least 30 minutes be established for women workers under 18 years of age.—Secretary of Labor's Decision, May 4, 1937.

Section 8.—CONVICT LABOR

1. THE ACT

"No convict labor will be employed by the contractor in the manufacture or production or furnishing of any of the materials, supplies, articles, or equipment included in the contract."—The Act, section 1 (d).

Section 9.—SAFETY AND HEALTH

1. INSANITARY, HAZARDOUS, AND DANGEROUS CONDITIONS

"No part of such contract will be performed nor will any of the materials, supplies, articles, or equipment to be manufactured or furnished under said contract be manufactured or fabricated in any plants, factories, buildings, or surroundings or under working conditions which are insanitary or hazardous or dangerous to the health and safety of employees engaged in the performance of said contract."—The Act, section 1 (e).

2. COMPLIANCE, PRIMA FACIE

"Compliance with the safety, sanitary, and factory inspection laws of the State in which the work or part thereof is to be performed shall be prima facie evidence of compliance with this (Sec. 1 (e)) subsection."—The Act, section 1 (e).

Section 10.—POSTING, RECORDS AND REPORTS

1. POSTING

"The contractor shall post a copy of the stipulations in a prominent and readily accessible place at the site of the contract work and shall keep such employment records as are required in the regulations under the Act available for inspection by authorized representatives of the Secretary of Labor."—Regulations, article 1 (g).

2. RECORDS

"Art. 501. Every contractor subject to the provisions of the Act and these Regulations shall maintain the following records of employment, which shall be available for the inspection and transcription of authorized representatives of the Secretary of Labor:

- (a) Name, address, sex, and occupation of each employee covered by the contract stipulations.
- (b) Date of birth of each such employee under 21 years of age.
- (c) Wage and hour records for each such employee, including the rate of wages and the amount paid each pay period, the hours worked each day and each week, and the period during which each such employee was engaged on a Government contract, with the number of such contract. Compliance with this subsection shall be deemed complete if wage and hour records for all employees in the plant are maintained during the period between the award of any Government contract and the date of delivery of the materials,

supplies, articles, or equipment: *Provided*, That where no separate records for employees engaged on Government contracts are maintained, it shall be presumed until affirmative proof is presented to the contrary that all employees in the plant, from the date of award of any such contract until the date of delivery of the materials, supplies, articles, or equipment, were engaged on such Government contract.

"Such records shall be kept on file for at least 1 year after the termination of the contract."—Regulations, article 501.

3. NO SPECIAL RECORD KEEPING SYSTEMS REQUIRED

It is not necessary for a contractor subject to the Public Contracts Act to maintain any separate and distinct records for the purposes of the Act if his usual records present the required information.

Section 11.—ADVERTISEMENT AND BIDS

1. ADVERTISEMENTS

"When it is anticipated that invitation for bids will develop contracts in excess of \$10,000 in amount it is proper that the advertisement give notice to bidders that the Act of June 30, 1936, will be applicable to such contracts."—16 Comp. Gen. 583.

"The statute is mandatory, and its manifest purpose is that recipients of Government contracts coming within its terms shall be subject to its requirements."—16 Comp. Gen. 583.

2. QUALIFIED BIDS

a. In general.

All contracts to which the statute is applicable must include the prescribed regulations and stipulations in every instance without any qualification whatever, and any bid which, by qualification, undertakes to avoid compliance with the statute in any way, or by any means, will be subject to rejection.—16 Comp. Gen. 583.

b. Exempting manufacturer.

A reservation in a bid submitted by a dealer attempting to exempt a manufacturer who is to deliver directly to the Government from compliance with the Act or Regulations would require the rejection of such a bid.—16 Comp. Gen. 583.

c. Refusing records.

The Regulations of the Secretary concerning the keeping of records are obligatory upon contractors subject to the Act. The taking of an exception to this requirement in a bid for a contract under the Act invalidates the bid.—16 Comp. Gen. 590.

d. On items less than \$10,000.

When a bidder who specifically takes exception to the requirements of the Act or Regulations is the lowest bidder on some of the items advertised in an aggregate value below \$10,000, the exceptions in the bids may properly be disregarded and no readvertisement is necessary, provided that the terms of the invitation permit bids for individual items to be received.

Section 12.—ENFORCEMENT METHODS

1. CANCELCATION OF CONTRACTS

"That any breach * * * shall render the party responsible therefor liable to the United States of America * * *. The agency of the United States entering into such contract shall have the right to cancel the same and to make open market purchases or enter into other contracts for the completion of the original contract, charging any additional costs to the original contractor."—The Act, section 2.

2. CIVIL ACTION

"Any sums of money due to the United States of America may be recovered in suits brought in the name of the United States of America by the Attorney General thereof."—The Act, section 2.

3. COMPLAINTS

"Whenever any officer or employee of the United States Government or of any agency thereof has any knowledge of or receives any complaint with respect to a breach or violation of the stipulations required under article 1, he shall transmit such complaint according to the usual practice in his department to the Department of Labor, together with such other information as he has in his possession."—Regulations, article 1202.

4. LIQUIDATED DAMAGES

"Any breach or violation of any of the representations and stipulations in any contract for the purposes set forth in section 1 hereof shall render the party responsible therefor liable to the United States of America for liquidated damages in addition to damages for any other breach of such contract, the sum of \$10 per day for each male person under 16 years of age or each female person under 18 years of age, or each convict laborer knowingly employed in the performance of such contract * * *."—The Act, section 2.

5. PUNISHMENT FOR CONTEMPT

"In case of contumacy, failure, or refusal of any person to obey such an order, any District Court of the United States or of any Territory or possession or the Supreme Court of the District of Columbia, within the jurisdiction of which the inquiry is carried on, or within the jurisdiction of which said person who is guilty of contumacy, failure, or refusal is found, or resides, or transacts business, upon the application by the Secretary of Labor or representative designated by him, shall have jurisdiction to issue such person an order requiring such person to appear before him, or representative designated by him, to produce evidence if, as, and when so ordered, and to give testimony relating to the matter under investigation or in question, and any failure to obey such order of the court may be punished by said court as a contempt thereof."—The Act, section 5.

6. WITHHOLDING OF SUMS

"Any sums of money due to the United States of America by reason of any violation * * * may be withheld from any amounts due on any contract."—The Act, section 2.

7. INELIGIBLE LIST

The Secretary of Labor may direct and authorize the Comptroller General to distribute a list to all agencies of the United States containing the names of persons or firms found by the Secretary of Labor to have breached any of the agreements or representations required by this Act. Unless the Secretary of Labor otherwise recommends, no contracts shall be awarded to such persons or firms or to any firm, corporation, partnership, or association in which such persons or firms have a controlling interest until 3 years have elapsed from the date the Secretary of Labor determines such breach to have occurred.—The Act, section 3.

Section 13.—EXCEPTIONS AND EXEMPTIONS

1. AGRICULTURAL OR FARM PRODUCTS

a. In general.

"The Act does not apply to agricultural or farm products including those processed for first sale by the original producers."

b. Raw unprocessed cotton.

Contracts entered into by Government agencies for the purchase of raw unprocessed cotton are not subject to the provisions of the Act.

c. Canned goods.

When the contractor raises and cans his own fruit or vegetable products, the canning by him is exempt from the provisions of the Act as an agricultural product processed for first sale by the original producer.

d. Processed hemp.

A farmer processes hemp for himself and other farmers and the sale price is divided equally on each lot. If he processes and sells the hemp to the Government as agent for the farmers, the contract is exempt from the Act. If the farmers sell their hemp to him for half of the resale price and he sells to the Government on his own account, his contract with the Government will not be a first sale and will be subject to the Act.

2. OPEN-MARKET PURCHASES

a. The Act.

"This Act shall not apply to purchases of such materials, supplies, articles, or equipment as may usually be bought in the open market."—The Act, section 9.

(1) This exception is restricted to materials which *Government agencies* are authorized by law to purchase in the open market and does not comprehend all of such particular classes of material or equipment as are usually available for purchases by the general public in the open market.—Letter Comptroller General to Representative McMillan, March 24, 1937, 81 Congressional Record 3546, daily Record.

b. The Regulations.

When the contracting officer is authorized by statute or otherwise to purchase in the open market without advertising for proposals the inclusion of the stipulations is not required.—Regulations, article 2.

c. The General Purchasing Act.

"Except as otherwise provided by law, all purchases and contracts for supplies or services, in any of the departments of the Government, and purchases of Indian supplies, except for personal services, shall be made by advertising a sufficient time previously for proposals respecting the same, when the public exigencies do not require the immediate delivery of the articles, or performance of the service. When immediate delivery or performance is required by the public exigency, the articles or service required may be procured by open purchase or contract, at the places and in the manner in which such articles are usually bought and sold, or such services engaged, be-

tween individuals."—United States Code, title 41, section 5; 36 Statutes 861.

3. PERISHABLES

a. The Act.

This act shall not "apply to perishables, including dairy, livestock, and nursery products."—The Act, section 9.

b. The Regulations.

"Perishables cover products subject to decay or spoilage and not products canned, salted, smoked, or otherwise preserved."—Regulations, article 2 (b).

c. Approved perishables.

In calling for bids for meats and other food products, the contracting officer shall be guided by an advisory opinion of the Provisions Committee of the Federal Specifications Executive Committee classifying certain items as perishables or nonperishables. This list of commodities, however, is not intended to be a complete list of perishable items for there are many items purchased by the Government which were not considered by the committee. The contracting officer should decide whether or not a commodity is a perishable before publishing his invitation for bids. If he decides that the commodity is a perishable, he will omit the stipulations required in contracts subject to the Act. If the contracting officer should determine that a particular commodity which does not appear upon the list of perishables is in fact perishable, he should immediately notify the Administrator of the Division of Public Contracts, through the regular departmental channels, of his determination in order that the Administrator may be advised of the nature of the determinations made and in order that the list of perishables may be augmented from time to time.

The committee has classified the following items as perishables:

Apples, evaporated (for organizations), F. S. Z-A-613.
 Apricots, evaporated (for organizations), F. S. Z-A-636.
 Bacon, Canadian (sales).
 Bacon, dry salt (ration overseas), Type 2, F. S. PP-B-31.
 Bacon (ration in U. S.), Type 1, Grade 2, F. S. PP-B-31.
 Bacon, sliced or balks, fancy grade (sales).
 Beef, corned, bulk.
 Beef, dried, sliced, bulk.
 Beef, fresh or frozen (ration), Type 1 or 2, Class 1, Grade B, F. S. PP-B-221.
 Beef, fresh or frozen, wholesale market cuts, Type 3 or 4, Class 1, Grade B, F. S. PP-B-221.
 Beef tenderloin, fresh frozen.
 Brains, calf (for organizations only), F. S. PP-B-656.
 Brains, hog (for organizations only), F. S. PP-B-661.
 Bread, soft, Rye, Type D, F. S. EE-B-671.
 Bread, soft, Vienna style, Type B, F. S. EE-B-671.

Bread, soft, wheat, Type A, F. S. EE-B-671.
 Butter (ration), Grade C (Score 90), F. S. C-B-801.
 Butter (sales), Grade A (score 94), or B (score 92), F. S. C-B-801.
 Buttermilk, Type A or B, F. S. C-B-818.
 Calves head and feet, fresh frozen.
 Cheese, fresh (ration), Grade B, F. S. C-C-271.
 Cheese (sales), including packages of 3 to 16-ounces (not to exceed 8 kinds).
 Chickens, broilers, Class B-1a, Grade A or B, F. S. PP-C-251a.
 Chickens, fryers, Class B-1b, Grade A or B, F. S. PP-C-251a.
 Chickens, roasters (sales), Class B-1c, Grade A, F. S. PP-C-251a.
 Chickens, roasters (ration), Class B-1c, Grade B, F. S. PP-C-251a.
 Clams, fresh, F. S. PP-C-401.
 Crabmeat, fresh, F. S. PP-C-656.
 Cranberries, fresh (in season) (for organizations only).
 Cream, fresh, Types 1 and 3, F. S. C-C-671 (for organizations only).
 Ducks, dressed, F. S. PP-D-741.
 Eggs (ration) in crates, Class A or B (U. S.), Class A, B, or C (oversea), Grade B-3 (2) F. S. C-E-271.
 Eggs (sales) in cartons, Class A or B (U. S.), Class A, B, or C (oversea), Grade B-3 (2) or B-3 (3), F. S. C-E-271.
 Fish, fresh, F. S. PP-F-381.
 Fish, salted or smoked, F. S. PP-F-401.
 Fowl, dressed (fricassee), F. S. PP-F-611a.
 Fruits, evaporated, in cartons or tins.
 Fruits, fresh (Philippine Department and transports only).
 Ham, boiled, pressed, or rolled.
 Ham, smoked, sweet-pickle cured, fancy grade.
 Headcheese, F. S. PP-H-151.
 Hearts, beef, fresh, F. S. PP-H-201.
 Ice cream, bulk or brick, F. S. EE-I-116 (for organizations only).
 Kidneys, beef, fresh, F. S. PP-K-351.
 Kidneys, lamb, fresh.
 Lamb, fresh, carcass or wholesale market cuts, Grade A or B, F. S. PP-L-91.
 Lamb loins, fresh frozen.
 Lamb tongues, pickled.
 Lard, Type 1 or 2, F. S. PP-L-101.
 Lard substitute (ration) Type 1 or 2, F. S. EE-L-101.
 Lard substitute (shortening) (sales).
 Liver, fresh, calf, Class A, Type 1 or 2, F. S. PP-L-351.
 Liver, fresh, beef, Class B, Type 1 or 2, F. S. PP-L-351.
 Luncheon loaf.
 Milk, fresh (ration) F. S. C-M-381a (for organizations only).
 Mutton, fresh, carcass or wholesale market cuts, Grade A, F. S. PP-M-701.
 Onions (ration) Type A or B, F. S. HHH-O-531.
 Oxtails, fresh.
 Oysters, fresh, Grade B or C, F. S. PP-C-956a.
 Peaches, evaporated (for organizations) F. S. Z-P-193.
 Pig's feet, Types B-1a, B-1b, and B-1c, F. S. PP-P-571.
 Pork, bellies, clear seedless, dry salt cured, 18-22 pounds.
 Pork, fatbacks, dry salt cured, F. S. PP-P-81.
 Pork, fresh, carcass or wholesale market cuts, F. S. PP-P-571.
 Pork, fresh, hams (ration) F. S. PP-P-571.
 Pork spareribs, corned.

Potato chips.

Potatoes, Irish (ration) F. S. HPH-P-611.

Potatoes, sweet, fresh, F. S. HHH-P-621.

Prunes, evaporated (for organizations) F. S. Z-P-681a.

Reindeer meat (for organizations only) (to be slaughtered and handled by approved processors).

Sausage, Bologna style, F. S. PP-S-71.

Sausage, Frankfurter style, F. S. PP-S-81.

Sausage, liverwurst, F. S. PP-S-88.

Sausage, pork, fresh, F. S. PP-S-91.

Sausage, summer, all kinds.

Scrapple (for organizations) F. S. PP-S-141.

Sweetbreads (for organizations) F. S. PP-S-871.

Tongue, fresh or smoked.

Tripe (for organizations).

Turkey, fresh (ration) Grade B, F. S. PP-T-791a.

Turkey, fresh (sales) Grade A, F. S. PP-T-791a.

Veal, fresh carcass or wholesale market cuts, F. S. PP-Y-191.

Veal loaf, not canned.

Vegetables, fresh (Philippine Department only).

Yeast, compressed, Type A, F. S. EE-Y-151.

d. Dairy, livestock, and nursery products.

Section 9 of the Act does not provide that all dairy, livestock, and nursery products are perishable per se for the purpose of the Act but to the contrary the provision exempts only dairy, livestock, and nursery products which are perishable in fact.

4. PUBLIC UTILITIES

Contracts for public-utility services, including electric light and power, water, steam, and gas are exempt from the application of the Act.—Regulations, article 603.

The Act does not apply to contracts "for the furnishing of service by radio, telephone, telegraph, or cable companies subject to the Federal Communications Act of 1934."—Regulations, article 2 (f).

5. CONTRACTS TO OVERCOME DEFAULT

Contracts covering purchases against the account of a defaulting contractor where the stipulations required herein were not included in the defaulted contract are exempt from the application of the Act.—Regulations, article 603.

6. FOREIGN CONTRACTS

Contracts which are to be performed outside the geographical limits of the United States, its Territories, and the District of Columbia are exempt from the application of the Act, except where such performance requires a shipment from within such geographic limits.—Regulations, article 603 (b).

7. CONTRACTS BY SECRETARY OF AGRICULTURE

The Public Contracts Act does not apply to "any contracts made by the Secretary of Agriculture for the purchase of agricultural commodities or the products thereof."—The Act, section 9.

8. CONTRACTS FOR TRANSPORTATION

The Public Contracts Act does not apply to contracts for the "carriage of freight or personnel by vessel, airplane, bus, truck, express, or railway line where published tariff rates are in effect."—The Act, section 9.

9. PAST WORK

The Public Contracts Act does not operate retroactively and applies only to work performed after the opening of the bids.

10. PROCEDURE FOR EXEMPTIONS

a. The Regulations.

"Requests for the exception or exemption of a contract or class of contracts from the inclusion or application of one or more of those stipulations required by article 1 must be made by the head of a contracting agency or department and shall be accompanied with a finding by him setting forth reasons why such inclusion or application will seriously impair the conduct of Government business."—Regulations, article 601.

"Request for the exception or exemption of a stipulation respecting minimum rates of pay and maximum hours of labor contained in an existing contract must be made jointly by the head of the contracting agency and the contractor and shall be accompanied with a joint finding by them setting forth reasons why such exception or exemption is desired."—Regulations, article 601.

"Decisions concerning exceptions or exemptions shall be in writing and approved by the Secretary of Labor or officer prescribed by him, originals being filed in the Department of Labor and certified copies shall be transmitted to the Department or agency originating the request, to the Comptroller General, and to the Procurement Division of the Treasury."—Regulations, article 602.

Section 14.—DEFINITIONS

1. CUSTODIAL EMPLOYEES

"Custodial employees as referred to in article 102 of the Regulations means those employees whose duties are directed to the maintenance of the plant such as watchmen and janitors rather than to

those who perform work on the commodities required by the Government."

2. MANUFACTURER

A "manufacturer" is a person who owns, operates, or maintains a factory or establishment that produces on the premises the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.—Regulations, article 101 (a).

3. OPEN-MARKET PURCHASES

Open-market purchases are those purchases which are authorized by statute, or otherwise, to be made in the open market without advertising for bids.

4. PERSON

Whenever used in this Act, the word "person" includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.—The Act, section 7.

5. REGULAR DEALER

A regular dealer is a person who owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles, or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and sold to the public in the usual course of business.—Regulations, article 101 (b).

6. THE SECRETARY

"The Secretary" means the Secretary of Labor.

7. THE ACT

"The Act" means Public Act No. 846, 74th Congress, approved June 30, 1936, commonly referred to as the Walsh-Healey Act, or the Public Contracts Act.

[PUBLIC—No. 846—74TH CONGRESS]

[S. 3055]

AN ACT

To provide conditions for the purchase of supplies and the making of contracts by the United States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in any contract made and entered into by any executive department, independent establishment, or other agency or instrumentality of the United States, or by the District of Columbia, or by any corporation all the stock of which is beneficially owned by the United States (all the foregoing being hereinafter designated as agencies of the United States), for the manufacture or furnishing of materials, supplies, articles, and equipment in any amount exceeding \$10,000, there shall be included the following representations and stipulations:

(a) That the contractor is the manufacturer of or a regular dealer in the materials, supplies, articles, or equipment to be manufactured or used in the performance of the contract;

(b) That all persons employed by the contractor in the manufacture or furnishing of the materials, supplies, articles, or equipment used in the performance of the contract will be paid, without subsequent deduction or rebate on any account, not less than the minimum wages as determined by the Secretary of Labor to be the prevailing minimum wages for persons employed on similar work or in the particular or similar industries or groups of industries currently operating in the locality in which the materials, supplies, articles, or equipment are to be manufactured or furnished under said contract;

(c) That no person employed by the contractor in the manufacture or furnishing of the materials, supplies, articles, or equipment used in the performance of the contract shall be permitted to work in excess of eight hours in any one day or in excess of forty hours in any one week;

(d) That no male person under sixteen years of age and no female person under eighteen years of age and no convict labor will be employed by the contractor in the manufacture or production or furnishing of any of the materials, supplies, articles, or equipment included in such contract; and

(e) That no part of such contract will be performed nor will any of the materials, supplies, articles, or equipment to be manufactured or furnished under said contract be manufactured or fabricated in any plants, factories, buildings, or surroundings or under working conditions which are insanitary or hazardous or dangerous to the health and safety of employees engaged in the performance of said contract. Compliance with the safety, sanitary, and factory inspection laws of the State in which the work or part thereof is to be performed shall be prima-facie evidence of compliance with this subsection.

SEC. 2. That any breach or violation of any of the representations and stipulations in any contract for the enterprise set forth in section 1 hereof shall render the party responsible therefor liable to the United States of America for liquidated damages, in addition to damages for any other breach of such contract, the sum of \$10 per day for each male person under sixteen years of age or each female person under eighteen years of age, or each convict laborer or each known employee in the performance of such contract, and a sum equal to the amount of any deductions, rebates, refunds, or underpayment of wages due to any person engaged in the performance of such contract; and, in addition, the United States of America, the United States entering into such contract shall have the right to cancel same and to make open-market purchases or enter into other contracts for the completion of the original contract, charging any additional cost to the original contractor. Any sums of money due to the United States of America by reason of any violation of any of the representations and stipulations of said contract set forth in section 1 hereof may be withheld from any sums due on any such contracts or may be recovered in suits brought in and by the United States of America by the Attorney General thereof. All sums withheld or recovered as deductions, rebates, refunds, or underpayments of wages shall be held in a special deposit account and shall be paid, on order of the Secretary of Labor, directly to the persons to whom they have been paid less than minimum rates of pay as set forth in such contract, or to the persons to whom such sums were withheld or recovered: *Provided*, That if any sums for such payments shall be entertained unless made with due diligence from the date of actual notice to the contractor of the withholding or recovery of such sums by the United States of America.

Sec. 3. The Comptroller General of the United States of America, is authorized and directed to distribute a list to all agencies of the United States containing the names of persons or firms found by the Secretary of Labor to have breached any of the agreements or representations required by this Act. Unless the Secretary of Labor otherwise recommends no contracts shall be awarded to such persons or firms or to any firm, corporation, partnership, or association in which such persons or firms have a controlling interest until three years have elapsed from the date the Secretary of Labor determines such breach to have occurred.

SEC. 4. The Secretary of Labor is hereby authorized and directed to administer the provisions of this Act and to utilize such Federal officers and employees and, with the consent of the State, such State and local officers and employees as he may find necessary to assist in the administration of this Act and to prescribe rules and regulations with respect thereto. The Secretary shall appoint, without regard to the provisions of the civil-service laws but subject to the Classification Act of 1923, an administrative officer, and such attorneys and experts, and shall appoint such other employees with regard to existing laws applicable to the employment and compensation of officers and employees of the United States, as he may from time to time find necessary for the administration of this Act. The Secretary of Labor or his authorized representatives shall have power to make investigations and findings as herein provided, and

prosecute any inquiry necessary to his functions in any part of the United States. The Secretary of Labor shall have authority from time to time to make, amend, and rescind such rules and regulations as may be necessary to carry out the provisions of this Act.

Sec. 5. Upon his own motion, or on application of any person affected by any order of any agency of the United States in relation to any subpoena or contract involving any of the provisions of this Act, and on complaint of a breach or violation of any representation or stipulation as herein provided, the Secretary of Labor, or an impartial representative designated by him, shall have the power to hold hearings and to issue orders requiring the attendance and testimony of witnesses and the production of evidence under oath. Witnesses shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In case of contumacy, failure, or refusal of any person to obey such an order, any District Court of the United States or of any Territory, or the Circuit Court of Appeals for the United States or of any Territory, or the Supreme Court of the District of Columbia, within the jurisdiction of which the inquiry is carried on, or any District Court of the United States, or any District Court of the United States, within the jurisdiction of which said person is residing, or in which said person is carrying on his business, presides or transacts business, upon the application by the Secretary of Labor or representative designated by him, shall have jurisdiction to issue to such person an order requiring such person to appear before him or representative designated by him, to produce evidence if, as, and when so ordered, and to give testimony relating to the matter under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof; and shall make findings of fact after a hearing and on the basis of which findings shall be conclusive upon all agencies of the United States, and if supported by the preponderance of the evidence, shall be conclusive upon the Secretary of Labor, and the Secretary of Labor is hereby authorized representative shall have the power, and is hereby authorized, to make such decisions, based upon findings of fact, as are deemed to be necessary to enforce the provisions of this Act.

Sec. 6. Upon a written finding by the head of the contracting agency or department that the inclusion in the proposal or contract of the representations or stipulations set forth in section 1 will seriously impair the conduct of Government business, the Secretary of Labor shall make exceptions in specific cases or otherwise when justice and public interest will be served thereby. Upon the joint recommendation of the contracting agency and the contractor, the Secretary of Labor may modify the terms of an existing contract respecting minimum rates of pay and maximum hours of labor as he may find necessary and proper in the public interest or to prevent injustice and undue hardship. The Secretary of Labor may provide reasonable limitations and may make rules and regulations allowing reasonable variations, tolerances, and exemptions to and from any or all provisions of this Act respecting minimum rates of pay and maximum hours of labor or the extent of the application of this Act to contractors, as hereinbefore described. Whenever the Secretary of Labor shall permit an increase in the maximum hours of labor stipulated in the contract, he shall set a rate of pay for any overtime, which rate shall be not less than one and one-half times the basic hourly rate received by any employee affected.

SEC. 7. Whenever used in this Act, the word "person" includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

SEC. 8. The provisions of this Act shall not be construed to modify or amend title III of the Act entitled "An Act making appropriations for the Treasury and Post Office Departments for the fiscal year ending June 30, 1934, and for other purposes", approved May 3, 1933 (commonly known as the Buy American Act), nor shall the provisions of this Act be construed to modify or amend the Act entitled "An Act relating to the rate of wages for laborers and mechanics employed on public buildings of the United States and the District of Columbia by contractors and subcontractors, and for other purposes", approved March 3, 1931 (commonly known as the Bacon-Davis Act), as amended from time to time, nor the labor provisions of title II of the National Industrial Recovery Act, approved June 16, 1933, as extended, or of section 7 of the Emergency Relief Appropriation Act, approved April 8, 1933; nor shall the provisions of this Act be construed to modify or amend the Act entitled "An Act to provide for the diversification of employment of Federal prisoners, for their training and schooling in trades and occupations, and for other purposes", approved May 27, 1930, as amended and supplemented by the Act approved June 23, 1934.

SEC. 9. This Act shall not apply to purchases of such materials, supplies, articles, or equipment as may usually be bought in the open market; nor shall this Act apply to perishables, including dairy, livestock and nursery products, or to agricultural or farm products processed for first sale by the original producers; nor to any contracts made by the Secretary of Agriculture for the purchase of agricultural commodities or the products thereof. Nothing in this Act shall be construed to apply to carriage of freight or personnel by vessel, airplane, bus, truck, express, or railway line where published tariff rates are in effect or to common carriers subject to the Communications Act of 1934.

SEPARABILITY CLAUSE

SEC. 10. If any provision of this Act, or the application thereof to any persons or circumstances, is held invalid, the remainder of the Act, and the application of such provisions to other persons or circumstances, shall not be affected thereby.

SEC. 11. This Act shall apply to all contracts entered into pursuant to invitations for bids issued on or after ninety days from the effective date of this Act: *Provided, however*, That the provisions requiring the inclusion of representations with respect to minimum wages shall apply only to purchases or contracts relating to such industries as have been the subject matter of a determination by the Secretary of Labor.

Approved, June 30, 1936.

NO. 504—REGULATIONS PRESCRIBED BY THE SECRETARY OF LABOR UNDER PUBLIC ACT NO. 846, SEVENTY-FOURTH CONGRESS

(SERIES A)

By virtue of the authority vested in the Secretary of Labor by section 4 of the Act entitled "An Act to provide conditions for the purchase of supplies and the making of contracts by the United States, and for other purposes", (Act of June 30, 1936, Public, No. 846, 74th Cong.) and in order to establish uniform procedure under said act, the following Regulations are hereby prescribed:

PART I—CONTRACT STIPULATIONS

ARTICLE 1. (Insertion of Stipulations).—Except as hereinafter directed, in every contract made and entered into by an executive department, independent establishment, or other agency or instrumentality of the United States, or by the District of Columbia, or by any corporation all the stock of which is beneficially owned by the United States, for the manufacture or furnishing of materials, supplies, articles, and equipment, with respect to which invitations for bids are issued on or after September 28, 1936, the contracting officer shall cause to be inserted in such invitation or the specifications and in such contract, the following stipulations:

Representations and stipulations pursuant to Public Act No. 846, Seventy-fourth Congress:

(a) The contractor is the manufacturer of or a regular dealer in the materials, supplies, articles, or equipment to be manufactured or used in the performance of the contract.

(b) All persons employed by the contractor in the manufacture or furnishing of the materials, supplies, articles, or equipment used in the performance of the contract will be paid, without subsequent deduction or rebate on any account, not less than the minimum wages as determined by the Secretary of Labor to be the prevailing minimum wages for persons employed on similar work or in the particular or similar industries or groups of industries currently operating in the locality in which the materials, supplies, articles, or equipment are to be manufactured or furnished under the contract: *Provided, however*, That this stipulation with respect to minimum wages shall apply only to purchases or contracts relating to such industries as have been the subject matter of a determination by the Secretary of Labor.

(c) No person employed by the contractor in the manufacture or furnishing of the materials, supplies, articles, or equipment used in the performance of the contract shall be permitted to work in excess of 8 hours in any 1 day or in excess of 40 hours in any 1 week, unless such person is paid such applicable overtime rate as has been set by the Secretary of Labor.

(d) No male person under 16 years of age and no female person under 18 years of age and no convict labor will be employed by the contractor in the manufacture or production or furnishing of any of the materials, supplies, articles, or equipment included in the contract.

(e) No part of the contract will be performed nor will any of the materials, supplies, articles, or equipment to be manufactured or furnished under said contract be manufactured or fabricated in any plants, factories, buildings, or surroundings or under working conditions which are insanitary or hazardous or dangerous to the health and safety of employees engaged in the performance of the contract. Compliance with the safety, sanitary, and factory inspection laws of the State in which the work or part thereof is to be performed shall be prima facie evidence of compliance with this subsection.

(f) Any breach or violation of any of the foregoing representations and stipulations shall render the party responsible therefor liable to the United States of America for liquidated damages, in addition to damages for any other breach of the contract, in the sum of \$10 per day for each male person under 16 years of age or each female person under 18 years of age, or each convict laborer knowingly employed in the performance of the contract, and a sum equal to the amount of any deductions, rebates, refunds, or underpayment of wages due to any employee engaged in the performance of the contract; and, in addition, the agency of the United States entering into the contract shall have the right to cancel same and to make open-market purchases or enter into other contracts for the completion of the original contract, charging any additional cost to the original contractor. Any sums of money due to the United States of America by reason of any violation of any of the representations and stipulations of the contract as set forth herein may be withheld from any amounts due on the contract or may be recovered in a suit brought in the name of the United States of America by the Attorney General thereof. All sums withheld or recovered as deductions, rebates, refunds, or underpayments of wages shall be held in a special deposit account and shall be paid, on order of the Secretary of Labor, directly to the employees who have been paid less than minimum rates of pay as set forth in such contracts and on whose account such sums were withheld or recovered: *Provided*, That no claims by employees for such payments shall be entertained unless made within 1 year from the date of actual notice to the contractor of the withholding or recovery of such sums by the United States of America.

(g) The contractor shall post a copy of the stipulations in a prominent and readily accessible place at the site of the contract work and shall keep such employment records as are required in the Regulations under the act available for inspection by authorized representatives of the Secretary of Labor.

(h) The foregoing stipulations shall be deemed inoperative, if this contract is for a definite amount not in excess of \$10,000.

ART. 2. (Statutory Exemptions).—Inclusion of the stipulations herein enumerated is not required in the following instances:

(a) Where the contracting officer is authorized by statute or otherwise to purchase in the open market without advertising for proposals;

(b) Where the contract relates to perishables, including dairy, livestock, and nursery products; ("perishables" cover products subject to decay or spoilage and not products canned, salted, smoked, or otherwise preserved);

(c) Where the contract relates to agricultural or farm products processed for first sale by the original producers;

(d) Where the contract is by the Secretary of Agriculture for the purchase of agricultural commodities or the products thereof;

(e) Where the contract is with a common carrier for carriage of freight or personnel by vessel, airplane, bus, truck, express, or railway line, where published tariff rates are in effect;

(f) Where the contract is for the furnishing of service by radio, telephone, telegraph, or cable companies, subject to the Federal Communications Act of 1934.

PART II.—ADMINISTRATIVE REGULATIONS

ART. 101. (Manufacturer or Regular Dealer).—A bidder or contractor shall be deemed to be a "manufacturer" or "regular dealer" within the meaning of the stipulation required by section 1 (a) of the act and article 1 (a) of these Regulations if he falls within one of the following categories:

(a) A manufacturer is a person who owns, operates, or maintains a factory or establishment that produces on the premises the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.

(b) A regular dealer is a person who owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles, or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and sold to the public in the usual course of business.

Except as hereinafter provided, every bid received from any bidder who does not fall within one of the foregoing categories shall be rejected by the contracting officer.

Whenever justice and the public interest will be served, bids for a contract or class of contracts will be exempted from the foregoing requirement by the Secretary of Labor upon the request of the head of the contracting agency or department when accompanied by his finding of fact that it will be so difficult to obtain satisfactory bids for the contract or class of contracts under the stipulated restrictions, that the conduct of Government business will be seriously impaired.

ART. 102. (Employees Affected).—The stipulations shall be deemed applicable only to employees engaged in or connected with the manufacture, fabrication, assembling, handling, supervision, or shipment of materials, supplies, articles, or equipment required under the contract and shall not be deemed applicable to office or custodial employees.

ART. 103. (Overtime).—Employees engaged in or connected with the manufacture, fabrication, assembling, handling, supervision, or shipment of materials, supplies, articles, or equipment used in the performance of the contract may be employed in excess of 8 hours in any 1 day or in excess of 40 hours in any 1 week, provided such persons shall be paid for any hours in excess of such limits the overtime rate of pay which has been set therefor by the Secretary of Labor.

Until otherwise set by the Secretary of Labor the rate of pay for such overtime shall be one and one-half times the basic hourly rate or piece rate received by the employee.

If in any 1 week or part thereof an employee is engaged in work covered by the contractor's stipulations, his overtime shall be computed after 8 hours in any 1 day or after 40 hours in any 1 week during which no single daily total of employment may be in excess of 8 hours without payment of the overtime rate.

ART. 104. (Dealer as Agent of Undisclosed Principal).—Whenever a dealer, to whom a contract within the Act and Regulations has been awarded, causes a manufacturer to deliver directly to the Government the materials, supplies, articles, or equipment required under the contract, such dealer will be deemed the agent of the manufacturer in executing the contract. As the principal of such agent the manufacturer will be deemed to have agreed to the stipulations contained in the contract.

ART. 201. (Breach of Stipulations).—Whenever the Department of Labor notifies the head of a contracting agency that a contractor is liable for liquidated damages by reason of a breach of stipulations as provided in section 2 of the Act, there shall be withheld from any balance due under the contract such amount as may be necessary to satisfy such liability pending final disposition of the case.

Whenever a final determination of a breach of stipulations is made, the Secretary of Labor will furnish to the contracting agency a copy of the findings and decision with such recommendations as will assist the contracting agency in determining whether or not the contract should be canceled for such breach.

ART. 501. (Records of Employment).—Every contractor subject to the provisions of the Act and these Regulations shall maintain the following records of employment which shall be available for the inspection and transcription of authorized representatives of the Secretary of Labor:

(a) Name, address, sex, and occupation of each employee covered by the contract stipulations.

(b) Date of birth of each such employee under 21 years of age.

(c) Wage and hour records for each such employee including the rate of wages and the amount paid each pay period, the hours worked each day and each week, and the period during which each such employee was engaged on a Government contract with the number of such contract. Compliance with this subsection shall be deemed complete if wage and hour records for all employees in the plant are maintained during the period between the award of any Government contract and the date of delivery of the materials, supplies, articles, or equipment: *Provided*, That where no separate records for employees engaged

on Government contracts are maintained, it shall be presumed until affirmative proof is presented to the contrary that all employees in the plant, from the date of award of any such contract until the date of delivery of the materials, supplies, articles, or equipment, were engaged on such Government contract.

Such records shall be kept on file for at least 1 year after the termination of the contract.

ART. 601. (Requests for Exceptions and Exemptions).—Request for the exception or exemption of a contract or class of contracts from the inclusion or application of one or more of those stipulations required by article 1 must be made by the head of a contracting agency or department and shall be accompanied with a finding by him setting forth reasons why such inclusion or application will seriously impair the conduct of Government business.

Request for the exception or exemption of a stipulation respecting minimum rates of pay and maximum hours of labor contained in an existing contract must be made jointly by the head of the contracting agency and the contractor and shall be accompanied with a joint finding by them setting forth reasons why such exception or exemption is desired.

All requests for exceptions or exemptions shall be transmitted through the Procurement Division of the Treasury for submission to the Department of Labor for consideration and shall be returned through the Procurement Division.

ART. 602. (Decisions Concerning Exceptions and Exemptions).—Decisions concerning exceptions and exemptions shall be in writing and approved by the Secretary of Labor or officer prescribed by him, originals being filed in the Department of Labor, and certified copies shall be transmitted to the department or agency originating the request, to the Comptroller General, and to the Procurement Division of the Treasury. All such decisions shall be promulgated to all contracting agencies by the Procurement Division of the Treasury.

ART. 603. (Administrative Exemptions).—The following classes of contracts have been exempted from the application of article 1 of these Regulations pursuant to the procedure required under section 6 of the act:

(a) Contracts for public utility services including electric light and power, water, steam, and gas;

(b) Contracts which are to be performed outside the geographic limits of the United States, its Territories, and the District of Columbia, except where such performance requires a shipment from within such geographic limits;

(c) Contracts covering purchases against the account of a defaulting contractor where the stipulations required herein were not included in the defaulted contract.

ART. 701. (Definition of "Person").—Whenever used in these Regulations, the word "person" includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

ART. 1101. (Minimum Wages).—Until a determination of the prevailing minimum wage for a particular industry or group of industries has been made by the Secretary of Labor prior to the invitation for bids, the stipulation with respect to wages in section 1 (b) of the Act will be inoperative, as provided in article 1 (b) of these Regulations.

Determinations of prevailing minimum wages or changes therein will be published in the Federal Register and sent to contracting officers through circular letters of the Procurement Division of the Treasury. Such determinations will be effective upon the dates fixed therein.

ART. 1201. (Reports of Contracts Awarded).—Whenever the contracting officer shall award a contract in which the stipulations required under article 1 are operative, he shall furnish the Department of Labor in duplicate on forms provided for this purpose, a statement showing the name of the contracting agency, the purchase order number, the material purchased, the date of award, the contract price, the proposed date of delivery, the contractor's name and address, and the name and location of the plant or plants fabricating or supplying the subject matter of the contract.

ART. 1202. (Complaints).—Whenever any officer or employee of the United States Government or of any agency thereof has any knowledge of or receives any complaint with respect to a breach or violation of the stipulations required under article 1, he shall transmit such complaint according to the usual practice in his department to the Department of Labor together with such other information as he has in his possession.

ART. 1203. (Other Contracts).—Nothing in these Regulations shall be construed as impairing the authority possessed by any contracting agency to require labor standards in contracts not covered by this act.

FRANCES PERKINS,
Secretary of Labor.

WASHINGTON, D. C., September 11, 1936.

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WALSH-HEALEY PUBLIC CONTRACTS ACT

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RULINGS AND INTERPRETATIONS, No. 2

Superseding No. 1, Issued July 6, 1937



September 29, 1939

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UNITED STATES DEPARTMENT OF LABOR
DIVISION OF PUBLIC CONTRACTS

UNITED STATES DEPARTMENT OF LABOR
FRANCES PERKINS, SECRETARY

DIVISION OF PUBLIC CONTRACTS
L. METCALFE WALLING, *Administrator*

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WALSH-HEALEY
PUBLIC CONTRACTS ACT

(Public No. 846, Seventy-fourth Congress,
Approved June 30, 1936; 49 Stat. 2036; U. S. C., title 41, secs. 35-45)

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RULINGS AND INTERPRETATIONS, No. 2

Superseding No. 1, issued July 6, 1937



September 29, 1939

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FOREWORD

This compilation of the text of the Walsh-Healey Act (49 Stat. 2036; U. S. C., title 41, secs. 35-45), the Regulations of the Secretary of Labor, and the most important rulings and interpretations which are of general interest, as well as the pertinent opinions of the Comptroller General on the Act, has been prepared to replace the earlier pamphlet *Rulings and Interpretations*, issued in July 1937. Certain new material not included in the earlier pamphlet has been added as well as some changes and additional rulings which have been made in the light of administrative experience since that time. Most of this material is in the nature of clarification, but you are cautioned to check carefully to note changes which have been made, as any prior rulings and interpretations that are inconsistent with those in this compilation have been superseded. From time to time, as occasion requires, amendments or additions to these rulings will be released through the office of the Administrator of the Division of Public Contracts, Department of Labor.

The widespread use which has been made of the earlier edition of July 1937 justifies us in thinking that such a further compilation will be useful and warrants the continuation of our practice of sending a copy of this pamphlet, as in the past, to every contractor with the Government subject to the provisions of the Walsh-Healey Act. While all the rulings and interpretations included in this compilation may be regarded as official, requests for further rulings and interpretations covering definite points must be submitted to the Division of Public Contracts, Department of Labor, Washington, D. C.

L. METCALFE WALLING,
Administrator.

BASIC LABOR STANDARDS REQUIRED BY THE PUBLIC CONTRACTS ACT

The Public Contracts Act sets standards of minimum wages, maximum hours, child labor, convict labor, and safety and health for the performance of Government contracts in excess of \$10,000.

MINIMUM WAGES

The minimum wages required are those which have been determined by the Secretary of Labor for specific industries. Minimum wages determined by the Secretary for a given industry do not retroactively apply to bids invited or contracts awarded prior to the effective date specified in the determination. Contracts awarded on bids which were solicited prior to the effective date of a wage determination will at no time be subject to the payment of the minimum wages.

HOURS OF WORK

The basic hours of work are 8 in any 1 day, or 40 in any 1 week. Overtime, however, is permitted provided that time and one-half is paid.

CHILD LABOR

The employment of boys under 16 and girls under 18 years of age is prohibited.

CONVICT LABOR

All convict labor is prohibited.

WORKING CONDITIONS

Conditions of safety, sanitation, and health are required. Compliance with the standards of the State in which the work is done is prima-facie evidence of compliance with this requirement.

VIII

Rulings and Interpretations Under the Walsh-Healey Public Contracts Act

Section I.—COVERAGE

1. IN GENERAL

The Public Contracts Act applies to "any contract made and entered into by any executive department, independent establishment, or other agency or instrumentality of the United States, or by the District of Columbia, or by any corporation all the stock of which is beneficially owned by the United States (all the foregoing being hereinafter designated as agencies of the United States), for the manufacture or furnishing of materials, supplies, articles, or equipment in any amount exceeding \$10,000."—The Act, section 1.

The Territories of Alaska and Hawaii are agencies or instrumentalities of the United States within the meaning of section 1.

The Government of Puerto Rico is not such agency or instrumentality of the United States within the meaning of section 1 and, consequently, contracts awarded by the Puerto Rican Government or an agency thereof are not subject to the provisions of the Public Contracts Act.

Contracts awarded by the offices of the Panama Canal are subject to the Act, such offices being an agency of the United States within the meaning of section 1 of the Act.

The Public Contracts Act does not apply to any contract awarded by a State or political subdivision thereof or by an agency of the State or political subdivision even though Federal funds are used in payment for the materials, supplies, articles, or equipment required under such contract.

The obligation of a contractor arises on the date when notice of award is sent to him and not on the date the contract is executed. The necessity of compliance with the representations and stipulations of the Act is confined to the period in which the contractor is actually engaged in the performance of work on the contract, provided the records of the contractor adequately disclose the period during which Government work is being performed.

2. INTEGRATED ESTABLISHMENT

When a contractor to whom a contract subject to the Act is awarded operates an integrated establishment which manufactures or produces materials or supplies that are incorporated into or otherwise used in the manufacture or supply of the materials, supplies, articles, or equipment called for by the contract, the Act is applicable to those departments which are engaged in the manufacture or production of the materials or supplies to be so incorporated into or used in the manufacture or processing of the ultimate product to be delivered to the Government as well as to the employees engaged in the manufacture or processing of that ultimate product. For example:

The processing of the leather and rubber for the shoes supplied under Government contracts subject to the Act is within the purview of the Act and Regulations, and compliance therewith is essential.

The production of sand and gravel for use in the manufacture of ready-mixed concrete required under a Government contract is subject to the Act.

The manufacture of pulp or paper required to be used in the performance of a Government contract subject to the Act for a finished commodity or commodities must likewise be in compliance with the Act.

3. AGRICULTURAL OR FARM PRODUCTS

The Act does not apply to "agricultural or farm products processed for first sale by the original producers." The Act, section 9.

Section 9 of the Public Contracts Act excluding agricultural products from the purview of the Act extends to all products which are agricultural in their nature as well as those products raised by farmers as a result of planting or cultivation. Under this interpretation, felled (but uncut) timber as distinguished from processed lumber or lumber products, is an agricultural product within the meaning of section 9 of the Act. As further examples:

Contracts entered into by Government agencies for the purchase of raw unprocessed cotton are not subject to the provisions of the Act.

When the contractor raises and cans his own fruit or vegetable products, the canning by him is exempt from the provisions of the Act as an agricultural product processed for first sale by the original producer.

The exclusion of "agricultural or farm products processed for first sale by the original producers" from the operation of the Act applies

only when a person or a single legal entity is both the original producer and the processor.

Cooperative associations or corporations that can produce of individual grower members are regarded as being entities separate from the individual grower members of such associations or corporations. Consequently, the canning of products by such an association or corporation is subject to the provisions of the Act.

The statutory exclusion applies if the first sale by the original producer is to a Government agency. If, however, the first sale by the original producer is not to a Government agency, any sale thereafter to a Government agency is subject to the provisions of the Act. Agricultural or farm products held in a warehouse that issues warehouse receipts, which are purchased by a contractor who sells the products to the Government, do not come within the exclusion.

4. STOCK ON HAND

A person who accepts a Government contract subject to the Public Contracts Act is not prevented by the Act from filling that contract by supplying material which was manufactured before the contract was awarded. The Act does not apply retroactively to any employee who was employed in manufacturing such material, but the Act does apply to any employee who works on the material, either in further manufacturing operations or in packing or shipping the finished product, after the date of the award of the contract.

Where a contractor who has taken a contract subject to the provisions of the Public Contracts Act for the supplying of sand, gravel, ready-mixed concrete, crushed stone, slag, and the like, has in stock at the time the performance of the contract is to begin and at all times during the period that the contract is in effect, stock adequate to supply at once the total remaining demands of the Government under the contract and the contract is filled by delivery from such stock, it may be considered that these materials are in stock even though the stock pile is added to at regular intervals to meet the demands of the commercial end of the contractor's business.

5. USED OR SECOND-HAND EQUIPMENT

There is no exception in favor of used or second-hand equipment, and all contracts for such equipment in any amount in excess of \$10,000 must contain the representations and stipulations of the Act.

6. BUY AMERICAN ACT

Section 8 of the Public Contracts Act expressly provides that it shall in no wise modify or amend the so-called Buy American Act.

A contract subject in part to the Buy American Act is not necessarily exempt from the Public Contracts Act and it should contain the stipulations of the Public Contracts Act in so far as the American-made goods required under the contract are concerned.

7. PERISHABLES

The Act does not "apply to perishables, including dairy, livestock, and nursery products."—The Act, section 9.

"Perishables" cover products subject to decay or spoilage and not products canned, salted, smoked, or otherwise preserved.—The Regulations, article 2 (b).

In calling for bids for meats and other food products, the contracting officer shall be guided by an advisory opinion of the Provisions Committee of the Federal Specifications Executive Committee classifying certain items as perishables or nonperishables. This list of commodities, however, is not intended to be a complete list of perishable items for there are many items purchased by the Government which have not been considered by the committee. The contracting officer should decide whether or not a commodity is a perishable before publishing his invitation for bids. If he decides that the commodity is a perishable, he will omit the stipulations required in contracts subject to the Act. If the contracting officer should determine that a particular commodity which does not appear upon the list of perishables is in fact a perishable, he should immediately notify the Administrator of the Division of Public Contracts, through the regular departmental channels, of his determination in order that the Administrator may be advised of the nature of the determination made and in order that the list of perishables may be augmented from time to time.

The committee has classified the following items as perishables:

Apples, evaporated (for organizations), F. S. Z-A-613.
 Apricots, Evaporated (for organizations), F. S. Z-A-638.
 Bacon, Canadian (sales).
 Bacon, dry salt (ration overseas), Type 2, F. S. PP-B-81.
 Bacon (ration in U. S.), Type 1, Grade 2, F. S. PP-B-81.
 Bacon, sliced or slabs, fancy grade (sales).
 Beef, corned, bulk.
 Beef, dried, sliced, bulk.
 Beef, fresh or frozen, wholesale market cuts, Type 3 or 4, Class 1, Grade B, F. S. PP-B-221.
 Beef, fresh or frozen (ration), Type 1 or 2, Class 1, Grade B, F. S. PP-B-221.
 Beef tenderloin, fresh frozen.
 Brains, calf (for organizations only), F. S. PP-B-656.
 Brains, hog (for organizations only), F. S. PP-B-661.
 Bread, soft, Rye, Type D, F. S. EE-B-671.
 Bread, soft, Vienna style, Type B, F. S. EE-B-671.
 Bread, soft, wheat, Type A, F. S. EE-B-671.

Butter (ration) Grade C (Score 90) F. S. C-B-801.
 Butter (sales) Grade A (Score 94) or B (Score 92) F. S. C-B-801.
 Buttermilk, Type A or B, F. S. C-B-816.
 Calveshead and feet, fresh frozen.
 Cheese, fresh (ration) Grade B, F. S. C-C-271.
 Cheese (sales) including packages of 3 to 16 ounces (not to exceed 8 kinds).
 Chickens, broilers, Class B-1a, Grade A or B, F. S. PP-C-251a.
 Chickens, fryers, Class B-1b, Grade A or B, F. S. PP-C-251a.
 Chickens, roasters (sales) Class B-1c, Grade A, F. S. PP-C-251a.
 Chickens, roasters (ration) Class B-1c, Grade B, F. S. PP-C-251a.
 Clams, fresh, F. S. PP-C-401.
 Crabmeat, fresh, F. S. PP-C-656.
 Cranberries, fresh (in season) (for organizations only).
 Cream, fresh, Types 1 and 3, F. S. C-C-671 (for organizations only).
 Ducks, dressed, F. S. PP-D-741.
 Eggs (ration) in crates, Class A or B (U. S.) Class A, B, or C (oversea) Grade B-3 (2) F. S. C-E-271.
 Eggs (sales) in cartons, Class A or B (U. S.), Class A, B, or C (oversea) Grade B-3 (2) or B-3 (3), F. S. C-E-271.
 Fish, fresh, F. S. PP-F-381.
 Fish, salted or smoked, F. S. PP-F-401a.
 Fowl, dressed (fricassée), F. S. PP-F-611a.
 Fruits, evaporated, in cartons or tins.
 Fruits, fresh (Philippine Department and transports only).
 Ham, boiled, pressed, or rolled.
 Ham, smoked, sweet-pickle cured, fancy grade.
 Headcheese, F. S. PP-H-191.
 Heartis, beef, fresh, F. S. PP-H-201.
 Ice Cream, bulk or brick, F. S. EE-I-116 (for organizations only).
 Kidneys, beef, fresh, F. S. PP-K-351.
 Kidneys, lamb, fresh.
 Lamb, fresh, carcass or wholesale market cuts, Grade A or B, PP-L-81.
 Lamb Loin, fresh frozen.
 Lamb tongues, pickled.
 Lard, Type 1 or 2, F. S. PP-L-101.
 Lard substitute (ration) Type 1 or 2, F. S. EE-L-101.
 Lard substitute or shortening (sales).
 Liver, fresh, beef, Class B, Type 1 or 2, F. S. PP-L-351.
 Liver, fresh, calf, Class A, Type 1 or 2, F. S. PP-L-351.
 Luncheon loaf.
 Milk, fresh (ration) F. S. C-M-381a (for organizations only).
 Mutton, fresh, carcass or wholesale market cuts, Grade A, F. S. PP-M-781.
 Onions (ration) Type A or B, F. S. IHH-O-531.
 Oxtails, fresh.
 Oysters, fresh, Grade B or C, F. S. PP-C-950a.
 Peaches, evaporated (for organizations) F. S. Z-P-193.
 Pig's feet, Types B-1a, B-1b, and B-1c, F. S. PP-P-371.
 Pork, bellies, clear seedless, dry salt cured, 15-22 pounds.
 Pork, fatbacks, dry salt cured, F. S. PP-P-81.
 Pork, fresh, hams (ration), F. S. PP-P-571.
 Pork, fresh, carcass or wholesale market cuts, F. S. PP-P-571.
 Pork spareribs, corned.
 Potatoes, Irish (ration) F. S. HPH-P-611.

Potatoes, Sweet, fresh, F. S. HHH-P-621.
 Potato chips.
 Prunes, evaporated (for organizations) F. S. Z-P-681a.
 Reindeer meat (for organizations only) (to be slaughtered and handed by approved processors).
 Sausage, bologna style, F. S. PP-S-71.
 Sausage, frankfurter style, F. S. PP-S-81.
 Sausage, liverwurst, F. S. PP-S-86.
 Sausage, pork, fresh, F. S. PP-S-91.
 Sausage, summer, all kinds.
 Scrapple (for organizations), F. S. PP-S-141.
 Sweetbreads (for organizations), F. S. PP-S-571.
 Tongue, fresh or smoked.
 Tripe (for organizations).
 Turkey, fresh (ration), Grade B, F. S. PP-T-791a.
 Turkey, fresh (sales), Grade A, F. S. PP-T-791a.
 Veal, fresh carcass or wholesale market cuts, F. S. PP-V-191.
 Veal, loaf, not canned.
 Vegetables, fresh (Philippine Department only).
 Yeast, compressed, Type A, F. S. EE-Y-181.

The committee regarded the following items as not perishable:

Anchovies, in tins or glass.
 Apple-butter, in tins or glass.
 Applesauce, in tins or glass.
 Artichokes, canned.
 Baking powder.
 Baking powder (ration), Type B, C, D, or E, F. S. EE-P-611.
 Barley, pearl, in packages, F. S. N-B-121.
 Bay leaves.
 Beans, canned (with pork), Types A and B, F. S. JJJ-B-91.
 Beans, canned (without pork), Types A and B, F. S. JJJ-B-96.
 Beans, dry (ration), Type A, Grade B-2b, F. S. JJJ-B-106a.
 Beans, dry (other types), Types B, D, and E, Grade B-2b, Type C, Grade B-2a, F. S. JJJ-B-106a.
 Beans, Kidney, canned.
 Beans, lima, canned, Type I, Grade A or B, F. S. JJJ-B-126a.
 Beans, oven-baked, canned.
 Beans, string, canned (ration), Type 1, Grade B, F. S. JJJ-B-151.
 Beans, string, canned (sales), Type 1 or 2, Grade A, F. S. JJJ-B-151.
 Beans, with chili, canned.
 Beef, corned, canned, F. S. PP-B-201.
 Beef, dried, sliced, in tins or glass, F. S. PP-B-21.
 Beef extract.
 Beets, canned, F. S. JJJ-B-181.
 Blackberries, canned, Grades B and D, F. S. Z-B-421.
 Blueberries, canned, Grades A and B, F. S. Z-B-491.
 Bouillon cubes.
 Bread, hard, F. S. EE-B-351.
 Brussels sprouts, canned.
 Cabbage, canned (for organizations), F. S. JJJ-C-21.
 Candy, chocolate, stick, drops, etc. (not to exceed 5 selections).
 Capers, bottled.

Carrots, canned (for organizations), Type 1 or 2, Grade A or B, F. S. JJJ-C-76.
 Catsup, tomato, in tins (for organizations), F. S. JJJ-C-91.
 Catsup, tomato, bottles.
 Caviar, in tins.
 Cereals, breakfast, all kinds.
 Cherries, canned, F. S. Z-C-301.
 Cherries, maraschino, in glass.
 Chewing gum.
 Chicken, canned (whole, half, or fricasee).
 Chili con carne, canned.
 Chili powder, in tins or glass.
 Chocolate, plain or milk, cakes.
 Chop suey.
 Chow mein.
 Chinamon, ground (ration), F. S. EE-S-631.
 Clam Chowder, canned.
 Clams, whole, canned.
 Clams, minced, canned.
 Cocoa, breakfast, in small packages.
 Cocoa (ration), Type 1, F. S. JJJ-C-501.
 Cocoa or chocolate beverage preparations.
 Coconut, prepared, dried or moist.
 Coffee, green, Type 1, F. S. HHH-C-571 (depots only).
 Coffee (ration), Type 2, subtype (1) or (2), Grade A, F. S. HHH-C-571.
 Coffee, high grade (not to exceed 5 brands).
 Coffee, soluble.
 Coffee substitutes (not to exceed 2 brands).
 Coloring, food.
 Cookies, packages or cartons (6 selections).
 Corn, canned (ration), Type 1, Grade B, F. S. N-C-501.
 Corn, canned (sales), Type 1 or 2, Grade A, F. S. N-C-501.
 Cornmeal, Type 1 or 2, F. S. N-C-521.
 Cornstarch, in cartons.
 Crabmeat, canned.
 Cracker meal.
 Crackers, including graham and whole wheat.
 Cream of tartar.
 Cream, whipping, evaporated, canned.
 Currants, dried.
 Curry powder.
 Dates, dried.
 Dressing, salad, including mayonnaise.
 Figs, canned, F. S. Z-F-351.
 Fish, flaked, canned, F. S. PP-F-371.
 Fish, kippered herring, canned.
 Flavoring extract (ration), Types B-1a-2 and B-1b-3, F. S. EE-E-911.
 Flavoring extract (sales), F. S. EE-E-911.
 Flavoring, food.
 Flour, buckwheat, in cartons or tins.
 Flour, graham (whole wheat meal), in cartons or tins.
 Flour, prepared (biscuit, cake, muffin, pancake, and cake mix).
 Flour, wheat (rations), F. S. N-F-481.

Flour, wheat (sales) in 6-, 12-, or 24-lb. bags (1 selection only).
 Fruits, salad, canned.
 Gelatins, pudding and dessert powders.
 Ginger ale (not to exceed 3 brands).
 Grape juice, bottles.
 Grapefruit, canned.
 Ham, canned, whole or half.
 Ham, deviled, canned.
 Hash, corned beef, canned, Type 2, F. S. PP-II-91.
 Hominy grits, in cartons or tins, Type A or B, F. S. N-H-521.
 Hominy, lye, canned, F. S. N-H-511.
 Honey, strained, in tins or glass.
 Horseradish, in glass.
 Jam, fruit (sales), in tins or glass.
 Jam, fruit, canned (ration), F. S. Z-J-71.
 Jelly, fruit (sales), in tins or glass.
 Juices, fruit, in tins or glass.
 Lobster, canned.
 Lognberries, canned, Grades B and C, F. S. Z-L-501.
 Macaroni (ration) in boxes, Type 1, 2, 3, or 4, F. S. N-M-51.
 Macaroni, in cartons.
 Marmalade, fruit, in tins or glass.
 Marshmallows, in tins or cartons.
 Meringue powder.
 Milk, condensed, F. S. C-M-321.
 Milk, dry, powder, Types A and B, F. S. C-M-351.
 Milk, evaporated, F. S. C-M-371.
 Milk, malted.
 Minced meat, in tins or glass.
 Molasses.
 Mushrooms, canned, F. S. JJJ-M-851.
 Mustard, dry powdered.
 Mustard, prepared.
 Noodles, in cartons.
 Nuts, in shell (in season).
 Nuts, shelled, in tins, glass or packages.
 Oatmeal, Type A, F. S. N-O-41.
 Oats, rolled, Types B and C, F. S. N-O-41.
 Oil, olive, F. S. Z-O-351.
 Oil, vegetable, salad.
 Olives, green or ripe, stuffed or plain.
 Onions, pickled, in glass.
 Oysters, canned.
 Peaches, canned (ration), Class 1, Type 1, Grade B, F. S. Z-P-191.
 Peaches, canned (sales), Class 1 or 2, Grade A, F. S. Z-P-191, Type 1 or 2.
 Peanut Butter, in tins or glass.
 Pears, canned (for organizations), Type 1, Grade B, F. S. Z-P-201.
 Pears, canned (sales), Type 1, Grades A and B, F. S. Z-P-201.
 Peas, canned (ration), Type 1 or 2, size 3, Grade B, F. S. JJ-P-131.
 Peas, canned (sales), Type 1 or 2, Grade A, F. S. JJJ-P-151.
 Peas, dry, whole or split.
 Peel, citron, lemon, and orange.
 Pepper, black (ration), kind B1 (9) (a), F. S. EE-S-631.
 Pickles, chow chow, dill, gherkins, and mixed, sour or sweet (in tins or glass).

Pickles, cucumber (ration), Type 1, F. S. JJJ-P-391.
 Pimentos, in tins or glass.
 Pineapple, canned (sliced or crushed), F. S. Z-P-351.
 Potatoes, sweet, canned.
 Preserves, fruit, canned (ration), F. S. Z-P-631.
 Preserves, in glass.
 Prunes, canned (ration), Type 1 or 2, Grade B, F. S. Z-P-671a.
 Prunes, canned (sales), Type 1 or 2, Grade A, F. S. Z-P-671a.
 Pudding, canned.
 Pumpkin, canned, F. S. JJJ-P-701.
 Raisins, in cartons or tins.
 Raspberries, canned.
 Relish, in tins or glass.
 Rhubarb, canned.
 Rice (ration), Class A, B, or C, Grade 2, F. S. N-R-351.
 Rice (sales), in cartons, Class A, B, or C, Grade 2, F. S. N-R-351.
 Salmon, canned, F. S. PP-S-31.
 Salt, celery.
 Salt (ration), Type A, F. S. SS-S-31.
 Salt, rock.
 Salt (sales), in cartons, Type B, F. S. SS-S-31.
 Sardines, F. S. PP-S-51.
 Sauce, chili.
 Sauce, chutney, in glass.
 Sauce, chop suey.
 Sauce, cranberry, fancy grade, in tins or glass.
 Sauce, tabasco.
 Sauce, Worcestershire (type).
 Sauerkraut, canned, Grade 1 or 2, F. S. JJJ-S-71.
 Sausage, pork, canned, Type 3, F. S. PP-S-91.
 Sausage, Vienna style, canned, F. S. PP-S-101.
 Shad roe, canned.
 Shrimp, canned, Type 1 or 2, F. S. PP-S-311.
 Sirup, blended.
 Sirup (ration), Type 1, or 2, or 3, F. S. JJJ-S-351a.
 Sirup (sales), Types 4 and 5, F. S. JJJ-S-351a.
 Soap, grit, hand.
 Soap, grit, cake, Types A and B, F. S. P-S-571.
 Soap, laundry, cakes (other than issue).
 Soap, laundry, flakes (not to exceed 3 brands).
 Soap, laundry, ordinary (issue) F. S. P-S-591.
 Soap, laundry, powder (not to exceed 3 brands).
 Soap, shaving, cake or stick (not to exceed 2 brands).
 Soap, toilet, milled (not to exceed 5 brands).
 Soap, white floating, F. S. P-S-619.
 Soda, baking.
 Soups, canned.
 Spaghetti, in boxes (for organizations), F. S. N-M-51.
 Spaghetti, in cartons.
 Spaghetti, prepared, canned.
 Spices, other than cinnamon and pepper, in tins or cartons.
 Spinach, canned, Grade A or B, F. S. JJJ-S-611.
 Strawberries, canned.
 Sugar (ration), Type 1, Class B-2a (1) F. S. JJJ-S-701.

Sugar (sales), 5-lb. bags, Type 1, Class B-2a (1), F. S. JJJ-S-791.
 Sugar, brown, in cartons, Type 2, F. S. JJJ-S-791.
 Sugar, powdered, in cartons, Type 1, Class B-2a (2), F. S. JJJ-S-791.
 Sugar, cube, domino or tablet, in cartons, Type 1, Class B-2a (3), F. S. JJJ-S-791.
 Tamales, canned.
 Tapioca, F. S. N-T-101.
 Tapioca, instant, in cartons or tins.
 Tea, high grade, in tins or cartons.
 Tea (ration), Type 4 Variety 1, 2, 3, or 4, F. S. JJJ-T-191.
 Tomatoes, canned (ration), Grade B, F. S. JJJ-T-571.
 Tomato juice, in tins (for organizations).
 Tomato juice, in tins or glass.
 Tomato paste, in tins or glass.
 Tomato puree, canned.
 Tongue, canned, F. S. PP-T-571.
 Tuna Fish, canned, F. S. PP-T-771.
 Veal loaf, canned.
 Vegetables, mixed, canned.
 Vinegar (ration), Type 1 or 2, F. S. Z-V-401.
 Vinegar (sales), in bottles, Type 1 or 2, F. S. Z-V-401.
 Wafers, whole wheat.
 Yeast, dried.
 Zwieback.

A contract for the supplying and planting of small trees which are required to be planted within 36 hours to avoid spoilage is a contract for nursery stock which is included within the exemptions provided for such products in section 9 of the Act.

Photographic film and paper are not considered perishable products within the meaning of the Act.

Ready-mixed concrete and hot mix bituminized aggregates are not "perishables" within the meaning of the Act, for the reason that the quality of perishableness is not inherent in any of its components or in itself, but is merely a condition superimposed for a short time during a certain period of processing.

A contract for mattress lumber, which lumber must be green, is included within the exemption for perishables in section 9 of the Act.

8. DAIRY, LIVESTOCK, AND NURSERY PRODUCTS

Section 9 of the Act does not operate to exclude all dairy, livestock, and nursery products, but only those dairy, livestock, and nursery products which are perishable in fact.

9. PUBLIC UTILITIES

The Act does not apply to "common carriers subject to the Communications Act of 1934."—The Act, section 9.

The Act does not apply to contracts "for the furnishing of service by radio, telephone, telegraph, or cable companies, subject to the Fed-

eral Communications Act of 1934."—The Regulations, article 2 (f).

Contracts for public utility services, including electric light and power, water, steam, and gas, are exempt from the application of the Act.—The Regulations, article 603 (a).

10. CONTRACTS TO OVERCOME DEFAULT

Contracts covering purchases against the account of a defaulting contractor where the stipulations required herein were not included in the defaulted contract are exempt from the application of the Act.—Regulations, article 603 (c).

11. CONTRACTS BY SECRETARY OF AGRICULTURE

The Act does not apply to "contracts made by the Secretary of Agriculture for the purchase of agricultural commodities or the products thereof."—The Act, section 9.

Contracts entered into by the Secretary of Agriculture for agricultural commodities and the products thereof and contracts entered into by the Federal Surplus Commodities Corporation for surplus agricultural commodities and the products thereof are, by virtue of section 9 of the Public Contracts Act, excluded from the operation of the Act.

A contract for the purchase of crop and tree seeds made and entered into under the authority of the Secretary of Agriculture falls within the exemption.

The phrase "agricultural commodities" in section 9 of the Act does not embrace such items as fertilizer, harvesting machines, or other items which are extraneous aids to the production of agricultural products and are not agricultural products themselves.

12. CONTRACTS FOR TRANSPORTATION, HAULING, AND DELIVERY

The Public Contracts Act does not apply to contracts for the "carriage of freight or personnel by vessel, airplane, bus, truck, express, or railway line where published tariff rates are in effect."—The Act, section 9.

As to the applicability of the Act to hauling operations incidental to the performance of a contract for the manufacture or furnishing of materials, supplies, articles, or equipment, see section III, subsection 2i (2).

13. OPEN-MARKET PURCHASES

The Public Contracts Act does "not apply to purchase of such materials, supplies, articles, or equipment as may usually be bought in the open market."—The Act, section 9.

Open-market purchases are those permitted by statute to be made without advertising for bids.

14. OTHER STATUTES AND AGREEMENTS AS TO WAGES AND HOURS

The fact that the Fair Labor Standards Act of 1938 (Public, No. 718, 75th Cong., approved June 25, 1938) or any State legislation permits a greater number of working hours without payment of overtime does not affect the obligations of an employer under the Act.

Private agreements respecting hours of work, wage rates, and overtime cannot relieve an employer of his obligations under the Act; e. g., a union contract between any employer and his employees providing for time and one-third overtime does not excuse the payment of time and one-half.

15. ASSEMBLING

A contract for an article which is produced by assembling miscellaneous parts purchased by the contractor from others is a contract to manufacture an article in the sense in which that term is used in the Public Contracts Act.

16. CONSTRUCTION

Construction contracts or contracts for the erection or installation of materials and equipment on the Government site are not subject to the Public Contracts Act.

Contracts calling in part for the erection or installation of materials and equipment may be either construction contracts or manufacturing contracts, depending largely upon the place where the work is performed. If most of the work is done at the site of the erection or installation, the contract should be regarded as a construction contract; however, if most of the work is done in a shop or factory away from the place of use, the contract should be regarded as a manufacturing contract. If there is any doubt concerning the classification of such contracts, the matter should be referred to the Department of Labor for decision.

Dredging contracts as such are construction contracts and not subject to the Public Contracts Act.

17. BOATS AND SHIPS

Contracts to manufacture or furnish small unregistered boats such as canoes, rowboats, and launches are contracts for the furnishing of equipment and are subject to the Act.

Public Act No. 528, Seventy-fifth Congress, approved by the President May 17, 1938, entitled "An Act to establish the composition

of the United States Navy, to authorize the construction of certain naval vessels, and for other purposes," enlarged the application of the Public Contracts Act by providing that the construction, alteration, furnishing, or equipping of any naval vessel, contracts for which are made after June 30, 1938, must be in accordance with the provisions of the Public Contracts Act, unless such course, in the judgment of the President of the United States, should not be in the public interest.

Public Act, No. 528 extending the jurisdiction of the Public Contracts Act to include contracts for the construction, alteration, or repair of naval vessels is limited to vessels that are constructed for the Navy Department, and thus, under the terms of that Act, a contract awarded by a Department other than the Navy Department for a launch or other vessel of a size requiring registration is not within the terms of the Public Contracts Act.

The manufacturing or furnishing of materials to shipbuilding firms having contracts to construct vessels for the United States Navy that are subject to the Public Contracts Act is not within the purview of the Public Contracts Act.

18. PERSONAL SERVICES

A contract exclusively for personal services is not covered by the Act; however, a contract in which services are incidental to or are an integral part of the manufacture or furnishing of materials, supplies, articles, or equipment is subject to the Act.

The following contracts have therefore been held to be outside the Act:

Laundry and dry-cleaning contracts.

Contracts exclusively for hauling.

Tire repair and tube vulcanizing contracts.

The following contracts have been deemed to fall within the provisions of the Act:

Contracts for photographic reproductions of patent designs.

Contracts for the tabulation of social-security records.

Contracts for books, periodicals, magazines, newspapers, and the printing of briefs.

19. RENTAL CONTRACTS

Contracts for the rental of personal property such as calculating machines and furniture are subject to the Act. Contracts for the rental of real property such as lands and offices are not.

Contracts strictly for the lease of a particular article should be distinguished from contracts for the doing of particular work in

which the contractor is to employ his own equipment. The former contract is within the terms of the Act, while the latter is essentially a service contract and is exempt from the Act.

Under contracts for the rental of personal property when no assembling or production operations are involved, the Act applies to those employees engaged in furnishing the property or equipment required under the contract.

20. AMOUNT INVOLVED

a. Indefinite amount.

All contracts which may exceed \$10,000 should include the stipulations required by the Act unless the contracting officer knows in advance that the total amount of the contract will not exceed \$10,000 in any event.

b. Reduction for prompt payment.

If a contract is awarded for an amount in excess of \$10,000 the stipulations required by the Act should be included, notwithstanding the fact that prompt payment may reduce the actual expenditure below \$10,000. "The total price named in the contract is the contract price insofar as the application of the said act is concerned, any reduction therein being dependent upon a condition subsequent to the contract."—16 Comp. Gen. 583; 16 Comp. Gen. 603.

c. Trade-in allowance.

Trade-in allowances should not be deducted from the bid price in determining whether the contract is in excess of \$10,000. The contract price rather than the means of payment is the controlling factor.—16 Comp. Gen. 605.

d. Installment delivery.

Contracts which exceed or may exceed \$10,000 come within the Act, irrespective of whether the material is delivered in installments or in one lot.

e. Contracts for separate items.

When an invitation is issued for bids on a variety of items totaling \$10,000, subject to the Act, and bidders are permitted to bid on any one or more of the items amounting to less than \$10,000, awards made to different bidders for less than \$10,000 are not subject to the Act.

If one contract is awarded containing several schedules for separate items, and if the total price of the contract is in excess of \$10,000, the contract is subject to the Act, even though each item is manufactured by a different concern, and the amount of each item is less than \$10,000.

Where a single award is made in an amount exceeding \$10,000 on a single invitation, and for reasons of convenience several formal contracts are issued covering the award, each such contract is subject to the provisions of the Act, although each may happen to be for a sum less than \$10,000.

f. Awards aggregating less than \$10,000 on bids exceeding that amount.

When a person bids on several items of equipment of an aggregate value in excess of \$10,000 and is the low bidder on only a few items of an aggregate value below \$10,000, his contract for those few items is not subject to the Act.—16 Comp. Gen. 744.

21. PLACE OF PERFORMANCE

Contracts to be performed in the United States, the District of Columbia, Alaska, and Hawaii are subject to the provisions of the Public Contracts Act. Contracts to be performed outside the United States and the Territories mentioned are not subject to the provisions of the Act unless the performance of such contracts requires the shipment of the materials therefrom, in which event compliance with the Act and Regulations thereunder need be shown only as to operations within the United States and such Territories.

Section II.—CONTRACTORS

1. PRIMARY CONTRACTORS

a. The Act.

The Public Contracts Act requires that every contractor be "a manufacturer of or a regular dealer in the materials, supplies, articles, or equipment to be manufactured or used in the performance of the contract."—The Act, section 1 (a).

b. Manufacturer.

A "manufacturer" is a person who owns, operates, or maintains a factory or establishment that produces on the premises the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.—Regulations, article 101 (a).

Assembler.

A contractor who produces an article by assembling miscellaneous parts, all or some of which have been purchased from others, is a manufacturer within the contemplation of the Act.

c. Regular dealer.

A "regular dealer" is a person who owns, operates, or maintains a store, warehouse, or other establishment in which the materials,

supplies, articles, or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and sold to the public in the usual course of business.—Regulations, article 101 (b).

(1) Lumber and timber products.

A regular dealer in lumber and timber products, if a wholesale lumber dealer, may be a person who owns, operates, or maintains a place of business in which the materials, supplies, articles, or equipment of the general character described by the specifications and required under the contract are bought for the account of such person and sold to the public in the usual course of business: *Provided*, That at least more than 50 percent of his business is such purchase and sale of such materials, supplies, articles, or equipment: *And provided further*, That upon all orders to manufacturers for direct shipment to the United States he agrees to insert a notice to the manufacturer to the effect that the supplies are purchased for the United States and that the manufacturer is within the terms of article 104 of these Regulations requiring compliance with the provisions of the Public Contracts Act.—Regulations, article 101 (b), as amended April 5, 1939.

(2) Coal.

A regular dealer in coal may be a person who owns, operates, or maintains a place of business in which the materials, supplies, articles, or equipment of the general character described by the specifications and required under the contract are bought for the account of such person and sold to users or other trade outlets in the usual course of business in lots of not less than a cargo or railroad carload.—Regulations, article 101 (b), as amended April 5, 1939.

(3) Machine tools.

A regular dealer in machine tools may be a person possessing, through contract or agreement with a manufacturer, the responsibility for selling that manufacturer's products, with respect to a specific territory, and who is authorized by such manufacturer to offer its products and to negotiate and conclude contracts for the furnishing thereof: *Provided*, That upon all orders to manufacturers for direct shipment to the United States he agrees to insert a notice to the manufacturer to the effect that the supplies are purchased for the United States and that the manufacturer is within the terms of article 104 of these Regulations requiring compliance with the provisions of the Public Contracts Act.—Regulations, article 101 (b), as amended April 5, 1939.

(4) Hay, grain, feed, and straw.

A regular dealer in hay, grain, feed, or straw may be a person who owns, operates, or maintains a store, warehouse, or other place of business in which the materials, supplies, articles, or equipment of the general character described by the specifications and required under the contract are bought for the account of such person and sold to the public in the usual course of business, and whose principal business is such purchase and sale of such materials, supplies, articles, or equipment.—Regulations, article 101 (b), as amended April 5, 1939.

(5) Brokers.

A broker, if properly authorized, may bid as agent of a person qualified as a "manufacturer" or "regular dealer" within the meaning of the Act and Regulations. Where a broker so bids the contract must issue in the name of the principal.

Brokers from whom foreign-made goods consigned directly to the Government are purchased need not qualify as regular dealers under article 101 (b) of the Secretary of Labor's Regulations No. 504, since the contract itself is not subject to the Act.

(6) Storage in public warehouse.

A person who stores materials, supplies, articles, or equipment in a public warehouse only is not qualified as a regular dealer within the meaning of article 101 (b) of the Secretary's Regulations No. 504 unless such person has a continuing right to specified space in the warehouse. If, however, a person qualified as a regular dealer is awarded a Government contract that is subject to the Act and makes delivery of the commodities called for under the contract from materials stored in a public warehouse by causing the warehouse to make shipment of the materials to the Government, the employees of the public warehouse are not employees of the contractor within the meaning of the Public Contracts Act, and consequently, are not subject to the Act.

d. Determination of qualifications.

The responsibility of determining whether or not a bidder is qualified as a manufacturer or as a regular dealer under the Public Contracts Act rests in the first instance with the contracting agency. However, any decision which the contracting officer might make is subject to review by the Department of Labor which is charged with the administration of the Act. The Department of Labor may determine the qualifications of a bidder in the first instance in the absence of any decision by the contracting officer.

2. SECONDARY CONTRACTOR

a. Subcontractor under manufacturer.

If a manufacturer buys materials, supplies, articles, or equipment to be used in manufacturing the commodity required by his contract with the Government, and if it is a regular practice in the industry of which he is a member to purchase such materials, supplies, articles, or equipment and not to manufacture them, the work performed by the vendor of such purchases is not subject to the Act.

b. Substitute manufacturer.

When a manufacturer undertakes a contract subject to the Act he assumes an obligation to produce the commodities required under the labor standards of that Act. He may not relieve himself of this obligation merely by shifting the work to another.

If a contractor is awarded a contract subject to the Act as a manufacturer, that contractor is liable for any acts or omissions on the part of a substitute manufacturer which would have constituted violations of the contractor's contract if he had performed the contract in his own plant and had committed or suffered such omissions in connection with that performance.

When a manufacturer to whom a contract has been awarded subject to the Public Contracts Act is required to show compliance with the Act at the plant or factory of any substitute manufacturer, there is no requirement specifying that the contractor obtain a formal warranty of compliance from such manufacturers. The means to be utilized by contractors in effecting compliance on the part of others must be left the subject of arrangement between the contractors and such others.

c. Regular dealer as agent of the manufacturer.

"Whenever a dealer, to whom a contract within the Act and Regulations has been awarded, causes a manufacturer to deliver directly to the Government the materials, supplies, articles, or equipment required under the contract, such dealer will be deemed the agent of the manufacturer in executing the contract. As the principal of such agent the manufacturer will be deemed to have agreed to the stipulations contained in the contract."—Regulations, article 104.

If a contract for more than \$10,000 is awarded to a regular dealer subject to the Public Contracts Act and he arranges with a manufacturer to produce and ship directly to the Government one or more items involving less than \$10,000, the manufacturer will still be bound by the stipulations contained in the regular dealer's contract.

Article 104 does not apply if this manufacturer ships the goods to and they are received in the warehouse or other establishment of the regular dealer.

If a contract is awarded to a regular dealer and part of the work on the contract is performed by a manufacturer, who in turn ships the material to a second manufacturer who completes the work on the contract and then ships directly to the Government, the Act applies to the employees of the manufacturer who made the direct shipment to the Government destination.

Section III.—EMPLOYEES

1. IN GENERAL

All employees (except office, supervisory, custodial, and maintenance employees) who, after the date of the award, are engaged in any operation preparatory or necessary to or in the performance of the Government contract are subject to the Act.

a. Employees covered by the Act.

"The stipulations shall be deemed applicable only to employees engaged in or connected with the manufacture, fabrication, assembling, handling, supervision, or shipment of materials, supplies, articles, or equipment required under the contract and shall not be deemed applicable to office or custodial employees."—Regulations, article 102.

The following employees have been construed to be employees engaged in or connected with the Government contract:

(1) If no separate records for employees engaged on Government work are maintained, all employees in the plant or department where the work is performed are presumed, until affirmative proof is presented to the contrary, to be engaged on Government work.—Regulations, article 501 (c).

(2) Technical workers closely associated with the productive processes involved in the manufacture of goods or commodities required by the Government, such as:

Laboratory technicians engaged in testing materials used in the productive processes necessary to the manufacture of the materials, supplies, articles, or equipment to be supplied to the Government.

Draftsmen engaged in the preparation of drawings required to be supplied to the Government, or prepared subsequent to the date of award for use by the manufacturer in producing the materials, supplies, articles, or equipment to be supplied to the

Government. This rule does not apply to draftsmen engaged in a supervisory capacity.

Workers whose work subsequent to the date of award consists of building models and of running tests of materials to be supplied to the Government.

Employees who make special dies and tools necessary for the performance of the contract.

(3) Elevator men who operate elevators upon which materials used in the Government contracts are moved from one floor to another.

(4) Operators of cranes which are used in carrying articles called for in the contract from one division of the factory to another.

(5) Employees who remove waste from or otherwise clean machines to permit continuous operation of them.

(6) Employees who prepare instructions for assembly, erection, maintenance, or repair to accompany a commodity required under a contract.

(7) Employees of the contractor who prepare chart and log books to record the operation of the apparatus required under the contract, when such charts or log books are demanded by the contracting officer or are to be delivered to the Government under the contract.

(8) Shipping employees.

(9) Employees examining or inspecting the materials, articles, supplies, or equipment to be supplied to the Government.

b. Employees not covered by the Act.

(1) Employees who are not engaged in or connected with the manufacture, fabrication, assembling, handling, supervision, or shipment of materials, supplies, articles, or equipment required under the contract.

(2) Employees on commercial work when such employees are actually segregated and when separate records are kept for employees on Government work.

(3) Office employees engaged exclusively in office work relating generally to the operation of the business and not engaged in the production of the materials, supplies, articles, or equipment required by the Government contracts.

(4) Custodial employees whose duties are directed to the maintenance of the plant and who do not perform work on the commodities required by the Government, such as:

Electricians.

Engineers.

Firemen.

Repair Shop Crews.

Watchmen.

Maintenance Men.

Telephone Operators.

Cleaners. (Except where continuous cleaning is necessary for the carrying on of the production process.)

The term "firemen," as used above, is intended to refer generally to those firemen whose activities are confined exclusively to the production of heat for employees within enclosed portions of the contractor's plant and to the production of power for plant operation, also those engaged solely as precaution against fires and to extinguish fires. Other types of firemen engaged in or connected with the processing of the Government product, such as those firing brick kilns or those firing the boilers for the manufacture of bituminous aggregate, are construed as subject to the Act.

The term "engineers," as used above, is intended to refer to employees of the engine room.

(5) Foremen who do not perform manual operations and have no direct physical contact with materials, supplies, articles, or equipment specified in the Government contract. The occasional giving of a hand here and there by such employees as an incident to their purely supervisory duties does not place them in the category of employees covered by the Act.

(6) Service men.

(7) Workers engaged in general experiments not specifically related to the production of the materials, supplies, articles, or equipment specified in the contract.

(8) Instructors who do not operate the machines or handle the materials involved in the production of Government commodities.

(9) Employees engaged exclusively in preparing material orders and requisitions and routing orders through the plant.

(10) Marine workers on barges or dredges, such as barge captains or workers on dredges out of touch with the shore for periods in excess of 24 hours. Employees on barges and dredges who go aboard daily from the shore and return at night to the shore are subject to its provisions, and their time will be deemed to commence from the period when they are required by the company to report for work.

The application of the Act to a given employee depends upon the work performed by him, and is not governed by the classification or title that he may have and is not affected in any way by the manner or method of payment to such employee. The determination as to whether or not a specific employee falls within an exempt classification is a question for decision by the Department of Labor in the light of the specific circumstances surrounding the employment of the given individual.

2. SPECIFIC INDUSTRIES

a. Drug clerks and dye mixers.

Drug clerks or employees engaged in mixing the formulas which form the mixture for the dyes which go into the printing of fabrics under Government contracts are employees manually engaged in manufacture. Since their duties are so directly connected with the processing of the finished materials, they must be classed as productive employees rather than office or custodial employees, and consequently are subject to the provisions of the Public Contracts Act.

b. Service-station operators.

The representations and stipulations of the Public Contracts Act are required to be included in any Government contract for the manufacture or furnishing of materials, supplies, articles, and equipment in any amount exceeding \$10,000. All indefinite amount contracts which may exceed \$10,000 should include the stipulations, unless the contracting officer knows in advance that the total amount of the contract will not exceed \$10,000 in any event. As applied to contracts for oil products requiring service-station deliveries of such products, the above requirement must be met; however, the stipulations of the Act included in the contracts are not applicable to employees working at the service stations, irrespective of whether the station is owned or operated by the contractor or by an independent contractor.

c. Crude-oil production.

In contracts for the delivery of crude oil where the contractor is a producer, the Act covers the employees engaged in extracting the oil and preparing it for shipment.

d. Refined-oil production.

In contracts for gasoline, kerosene, benzene, fuel oil, and other petroleum products in which the contractor is a refiner, the Act applies to employees engaged in the manufacturing; i. e., the employees at the refinery engaged in the refining processes and preparing the oil for shipment.

Barge crews and truckers transporting oil from the refinery to the contracting agency are not held subject to the provisions of the Act.

Where the contractor operates a plant in accordance with the requirements of the Public Contracts Act and supplies the Government with oil products from storage at that plant (part of which products were produced by others), the contractor is not required to show that the products obtained from other sources were produced in accordance with the requirements of the Act.

e. Oil-dealer's employees.

Where the contractor is a dealer, the Act applies to employees at the central distributing plant, including warehousemen, compounders, and chemists testing the lot out of which the Government order is filled, as well as the crews engaged in loading the material in vessels, tank cars, or tank wagons for shipment, and truckers making deliveries to the Government from such plant. The contractor is not required to show that employees at bulk stations and truckers making deliveries from those stations are employed in accordance with the standards of the Act. (Bulk stations as the term is used herein are intermediate points of storage between a central distributing plant and service stations.)

f. Packing-company employees.

Employees whose work consists of controlling the smoke and temperature in a smokehouse where meats are cured are subject to the Act.

g. Importing company employees.

Persons employed by an importer holding a contract subject to the Act who are required to weigh materials for the Government are subject to the Public Contracts Act; but employees of a public warehouse where the materials are stored by the importer, or employees of a public weigher are not subject to the provisions of the Act.

h. Motortruck and tractor employees.

When the contractor is a manufacturer of trucks the Act does not apply to those employees engaged in the distribution of the product such as employees in branch warehouses and service stations engaged in maintaining stocks for repairs and in performing repair services for trucks.

i. Truck owners and operators.

Truckers in the employ of a manufacturer engaged in hauling and moving the Government commodities from the manufacturer's establishment are not subject to the provisions of the Public Contracts Act.

Truckers in the employ of dealers and in the employ of producers of raw material or of such slightly processed materials as sand and gravel, ready-mixed concrete, bituminous aggregates, and the like are subject to the Act. The operations of men engaged in intraplant hauling of materials during processing are also subject to the Act.

(1) Subcontractor truckers.

The operations of bona fide subcontractor truckers are not subject to the provisions of the Public Contracts Act; however, an owner-

operator of a truck or other equipment is (*prima facie*) an employee of the contractor.

(2) **Trucking operations exempted under section 9.**

Section 9 of the Public Contracts Act provides that nothing in the Act shall be construed to apply to carriage of freight by vessel, airplane, bus, truck, express, or railway line where published tariff rates are in effect. Wherever the hauling of the Government commodities is governed by published tariff rates in effect, pursuant to State or Federal law, the trucking operations are not subject to the provisions of the Act.

Section IV.—WAGES AND HOURS

1. PROVISIONS AS TO MINIMUM WAGES

All persons employed by the contractor in the manufacture or furnishing of the materials, supplies, articles, or equipment used in the performance of the contract will be paid without subsequent deduction or rebate on any account, not less than the minimum wages as determined by the Secretary of Labor to be the prevailing minimum wages for persons employed on similar work or in the particular or similar industries or groups of industries currently operating in the locality in which the materials, supplies, articles, or equipment are to be manufactured or furnished under the contract.—The Act, section 1 (b).

Until a determination of the prevailing minimum wage for a particular industry or group of industries has been made by the Secretary of Labor prior to the invitation for bids, the stipulation with respect to wages in section 1 (b) of the Act will be inoperative, as provided in article 1 (b) of the Regulations. Determinations of prevailing minimum wages or changes therein will be published in the Federal Register and sent to contracting officers through circular letters of the Procurement Division of the Treasury. Such determinations will be effective upon the dates fixed therein.—Regulations, article 1101.

2. GOVERNMENT AND PRIVATE CONTRACTS

Where an employee works for any part of a day in a given pay roll or workweek on a Government contract for which a minimum-wage determination is in effect, he is entitled to at least the determined minimum wage for all hours worked by him in that pay roll or workweek.

3. METHOD OF WAGE PAYMENT

It is immaterial whether the wage is paid on an hourly or piece-rate basis, but the amount actually received by the employee must not be less than the minimum wage determined by the Secretary of Labor.

Where a piece-rate worker receives the minimum wage for the total hours worked in a given pay roll or workweek, the employer need not show the payment of the minimum wage for each hour in that week.

4. OCCUPATIONAL MINIMUM

The Public Contracts Act empowers the Secretary of Labor to determine the prevailing minimum wage for an industry; occupational minimum wages are not determined.

5. DEDUCTIONS AND REBATES

Section 1 (b) of the Public Contracts Act requires the payment of the minimum wages prescribed by the Secretary of Labor "without subsequent deduction or rebate on any account." The Act, however, does not forbid deductions or rebates as long as the net wage of the employee does not fall below the determined minimum wage.

6. LEARNERS AND APPRENTICES

Where a minimum-wage determination permits a tolerance for learners, a learner for the purposes of the determination is a beginning worker demonstrably requiring a special period of training in the performance of a semiskilled or skilled operation. No employee who has served as an experienced operator in an industry may be classified as a learner, even on an operation new to that employee. Whether an employee is a learner in a particular operation subject to a minimum-wage determination must depend upon the nature of the operation and the previous experience of the employee. No employee who has served longer than the learning period in an industry may be classified as a learner.

Where the minimum-wage determination creates a tolerance in favor of apprenticeship, it contemplates a minimum training period of not less than 4,000 hours (2 years). Compliance with the regulations of State or Federal apprenticeship committees is satisfactory evidence of the existence of a bona fide apprenticeship agreement.

Generally, in the employment of apprentices, the period of instruction must be considered in the computation of hours of employment. If the apprentice is employed on Government-contract work under the Public Contracts Act, he is entitled to overtime pay for all the time his attendance and effort are required in excess of 8 hours in any 1 day or 40 hours in any 1 week.

7. EFFECTIVE DATES OF WAGE DETERMINATIONS

Minimum-wage determinations become effective on the dates specified therein, and do not apply retroactively to bids invited or to contracts awarded prior to such effective date.

8. PUBLICATION OF WAGE DETERMINATIONS

Minimum-wage determinations as made are published in the Federal Register.

9. OVERTIME

a. The regulations.

Employees engaged in or connected with the manufacture, fabrication, assembling, handling, supervision, or shipment of materials, supplies, articles, or equipment used in the performance of the contract may be employed in excess of 8 hours in any 1 day or in excess of 40 hours in any 1 week, provided such persons shall be paid for any hours in excess of such limits the overtime rate of pay which has been set therefor by the Secretary of Labor.

Until otherwise set by the Secretary of Labor the rate of pay for such overtime shall be one and one-half times the basic hourly rate or piece rate received by the employee.

If in any 1 week or part thereof an employee is engaged in work covered by the contractor's stipulations, his overtime shall be computed after 8 hours in any 1 day or after 40 hours in any 1 week during which no single daily total of employment may be in excess of 8 hours without payment of the overtime rate.—Regulations, article 103.

b. Interpretations.

(1) The overtime rate of time and one-half of the employees' basic hourly rate must be paid for all hours worked in excess of 8 per day or 40 per week, whichever is the greater.

(2) An employee may not be required to work in the performance of a contract subject to the Act more than 8 hours in any 24 consecutive hours without payment of the overtime rate of time and one-half for all hours worked in excess of 8 in that period. The 24-hour period begins from the time the employee begins to work, or when he is required to report for work, whichever is the earlier.

(3) Whenever an employee works for any part of a day in a given pay-roll or work week on a Government contract subject to the Act, he is entitled to be paid time and one-half for all hours worked in excess of 8 on that day and in excess of 8 on any day in that week, or for all hours worked in excess of 40 in that week, whichever is the greater. For example, if an employee works 10 hours a day and 6 days per week, starting Monday, and works Monday morning on a Government contract, he is entitled to 2 hours overtime for Monday and for each succeeding day, or 12 hours overtime, but inasmuch as he worked 60 hours in the week his weekly overtime is greater than the sum of his daily overtime and he must be paid at the overtime rate for 20 hours. This is so even though the employee is engaged part of the time on commercial work.

(4) Compliance with the provisions of the Public Contracts Act becomes obligatory when the contractor begins the performance of the contract. The stipulations become inoperative at the time work under the contract is completed. Thus, if the contract is started on Monday and finished on Friday of the same week the Act does not require that any hours of work by employees on Saturday that may cause their workweek to exceed 40 hours be paid for at the rate of time and one-half their basic hourly rate.

(5) The employer may elect to follow his usual pay-roll week or to adopt a new pay-roll week for the duration of the contract, provided that if he elects a new pay-roll week he clearly indicates his election on his pay-roll records. For example, if the usual pay-roll period runs from Monday through Sunday and the employer starts on the Government contract work on Wednesday morning, he may elect to follow his usual pay-roll week from Monday through Sunday or to adopt a new pay-roll week commencing on any other hour and day he may elect. In either event all time over 8 hours per day or 40 hours per week in the accepted workweek must be considered overtime.

The employer is not liable for compliance with the Act or contract stipulations for work done on commodities for the commercial trade prior to the day of the workweek that work actually started on the Government contract; he is responsible for observing the overtime requirements for that portion of the first week after the work on the Government contract is started; in other words, he must pay time and one-half for all hours in excess of 8 per day or in excess of 40 in the remaining days of the workweek.

In the case of sporadic deliveries of ready-mixed concrete, or sand and gravel, or other such commodity, the workweek of the contractor supplying such commodity to the Government agency will be considered to begin on the day upon which work is commenced on the contract in the calendar week in which the sporadic delivery is made unless the contractor indicates a preference to have his regular workweek followed. This will not necessitate the keeping of separate records but the records must be kept in such a way as to indicate when deliveries are commenced and completed. The term "sporadic delivery" is used to indicate those deliveries that are relatively infrequent and unpredictable on the part of the contractor. The term is not used to describe deliveries that are regular in their nature even though there may be no deliveries during short periods comprised of a week or several consecutive weeks.

(6) The 8-hour period after which the overtime rate must be paid begins when the employee begins to work or is required to report for work, whichever is the earlier. His time should be counted so long

as he is required to remain at his place of work even though he may not at all times be actively engaged in that work.

(7) Where the daily earnings of an employee fluctuate from day to day by reason of the payment of piece rates or of performance premiums under an incentive plan, his basic hourly rate is arrived at by dividing his total earnings for a given pay-roll or workweek by the total number of hours worked during that week. It is not necessary to compute the overtime due an employee on the basis of his average hourly earnings from day to day by dividing his total wages earned each day in which he works in excess of 8 hours by the hours worked in the same day.

(8) If employees are paid on a piece-rate basis and are habitually required to be present at the plant during nonproductive hours, the basic hourly rate shall be determined by dividing the highest earnings on any 1 day by the number of hours in that day.

(9) The fact that certain employees are paid on a weekly or monthly basis does not affect their right to overtime payment at one and one-half times their basic hourly rate. In determining the basic hourly rate of such employee, his weekly salary should be divided by the normal number of hours in the workweek in the plant or division thereof in which he is employed.

(10) If the employees are paid a bonus or premium on the basis of the quantity or quality of work produced, the bonus or premium should be included as a part of the amount received in arriving at the basic hourly rate. This rule does not apply to annual or Christmas bonuses.

(It is the experience of the Department that there are some complex plans for the payment of extra money to employees that have a remote relationship to the hourly earnings of such employees. Where such plans are in operation the facts should be forwarded to the Department for a determination as to whether or not the payments should be included as a part of the basic hourly rate.)

(11) Where an employee, in consideration of his working the night shift, receives additional compensation in the form of a fixed percentage above the rate paid for the day shift, such additional compensation must be included in determining his basic hourly rate of pay for the purpose of calculating the overtime due him under the Public Contracts Act.

(12) An increase in the rate of pay after the beginning of work on a Government contract subject to the Act cannot be considered as payment in lieu of overtime.

(13) If an employee is paid two or more different hourly rates and works overtime, his basic hourly rate is determined by dividing

his pay for the week by the number of hours worked, unless the actual rate for the overtime hours is known, in which case that rate is the employee's basic hourly rate. If a minimum wage has been determined, the employee must still receive one and one-half times his basic hourly rate, but in no case less than one and one-half times the minimum wage.

(14) If an employee is engaged in any one day or week on Government work subject to different wage determinations, and if the records of the company do not disclose the time actually spent under each determination, for purposes of computing overtime, the employee's average hourly earnings will be used.

(15) If during any given workweek when an employee works on a Government contract subject to the Act he is paid for days or hours not worked, the amount paid for such days or hours may be offset against any amount that may be due for overtime during that week.

(16) The Act merely requires that persons directly connected with Government-contract work shall not work more than 8 hours in any 1 day or 40 hours in any 1 week but does not specify which days may be workdays. There is no prohibition in the Act against work on Sundays or holidays. This does not affect Federal, State, or local laws, or private agreements on the subject.

The Act does not affect or require the changing of any private arrangements as to overtime more favorable to the employee than the requirements of the Act. The Department of Labor is not empowered by the Act to enforce such private arrangements.

Section V.—CHILD LABOR

No male person under 16 years of age, and no female person under 18 years of age may be employed by the contractor in the manufacture or production or furnishing of any of the materials, supplies, articles, or equipment included in the contract.—The Act, section 1 (d).

Section VI.—CONVICT LABOR

No convict labor may be employed by the contractor in the manufacture or production or furnishing of any of the materials, supplies, articles, or equipment included in the contract.—The Act, section 1 (d).

Section VII.—SAFETY AND HEALTH

1. INSANITARY, HAZARDOUS, AND DANGEROUS CONDITIONS

No part of such contract may be performed nor will any of the materials, supplies, articles, or equipment to be manufactured or

furnished under said contract be manufactured or fabricated in any plants, factories, buildings, or surroundings or under working conditions which are insanitary or hazardous or dangerous to the health and safety of employees engaged in the performance of said contract.—The Act, section 1 (e).

2. COMPLIANCE WITH STATE INSPECTION LAWS

Compliance with the safety, sanitary, and factory inspection laws of the State in which the work or part thereof is to be performed is *prima facie* evidence of compliance with this (sec. 1 (e)) subsection.—The Act, section 1 (e).

Section VIII.—POSTING

The contractor shall post a copy of the stipulations in a prominent and readily accessible place at the site of the contract work and shall keep such employment records as are required in the regulations under the Act available for inspection by authorized representatives of the Secretary of Labor.—Regulations, article 1 (g). The posting of the poster furnished by the Department of Labor is compliance with this regulation.

Section IX.—RECORDS

Arr. 501. Every contractor subject to the provisions of the Act and these Regulations shall maintain the following records of employment, which shall be available for the inspection and transcription of authorized representatives of the Secretary of Labor:

Name, address, sex, and occupation of each employee covered by the contract stipulations.

Date of birth of each such employee under 21 years of age.

Wage-and-hour records for each such employee, including the rate of wages and the amount paid each pay period, the hours worked each day and each week, and the period during which each such employee was engaged on a Government contract, with the number of such contract. Compliance with the subsection shall be deemed complete if wage-and-hour records for all employees in the plant are maintained during the period between the award of any Government contract and the date of delivery of the materials, supplies, articles, or equipment: *Provided*, That where no separate records for employees engaged on Government contracts are maintained, it shall be presumed until affirmative proof is presented to the contrary that all employees in the plant, from the date of award of any such contract until the date of

delivery of the materials, supplies, articles, or equipment, were engaged on such Government contract.

Such records shall be kept on file for at least 1 year after the termination of the contract.—Regulations, article 501.

It is not necessary for a contractor subject to the Public Contracts Act to maintain any separate and distinct records for the purposes of the Act if his usual records contain the required information.

Section X.—ADVERTISEMENT AND BIDS

1. ADVERTISEMENTS

"When it is anticipated that invitation for bids will develop contracts in excess of \$10,000 in amount it is proper that the advertisement give notice to bidders that the Act of June 30, 1936, will be applicable to such contracts."—16 Comp. Gen. 583.

2. QUALIFIED BIDS

All contracts to which the statute is applicable must include the prescribed regulations and stipulations in every instance without any qualification whatever, and any bid which, by qualification, undertakes to avoid compliance with the statute in any way, or by any means, will be subject to rejection.—16 Comp. Gen. 583.

A reservation in a bid submitted by a dealer attempting to exempt a manufacturer who is to deliver directly to the Government from compliance with the Act or Regulations would require the rejection of such a bid.—16 Comp. Gen. 583.

The Regulations of the Secretary concerning the keeping of records are obligatory upon contractors subject to the Act. The taking of an exception to this requirement in a bid for a contract under the Act invalidates the bid.—16 Comp. Gen. 590.

Section XI.—ENFORCEMENT METHODS

1. CANCELCATION OF CONTRACTS

Any breach or violation of any of the representations and stipulations in any contract for the purposes set forth in section 1 hereof shall render the party responsible therefor liable to the United States of America for liquidated damages * * * ; and, in addition, the agency of the United States entering into such contract shall have the right to cancel same and to make open-market purchases or enter into other contracts for the completion of the original contract, charging any additional costs to the original contractor.—The Act, section 2.

2. COMPLAINTS

Whenever any officer or employee of the United States Government or of any agency thereof has any knowledge of or receives any complaint with respect to a breach or violation of the stipulations required under article 1, he shall transmit such complaint according to the usual practice in his department to the Department of Labor, together with such other information as he has in his possession.—Regulations, article 1202.

Any employer, employee, labor or trade organization, or other interested person or organization may report a breach or violation, or apparent breach or violation of the Act, or of any of the rules or regulations prescribed thereunder.

3. LIQUIDATED DAMAGES

Any breach or violation of any of the representations and stipulations in any contract for the purposes set forth in section 1 hereof shall render the party responsible therefor liable to the United States of America for liquidated damages in addition to damages for any other breach of such contract, the sum of \$10 per day for each male person under 16 years of age or each female person under 18 years of age, or each convict laborer knowingly employed in the performance of such contract, and a sum equal to the amount of any deductions, rebates, refunds, or underpayment of wages due to any employee engaged in the performance of such contract.—The Act, section 2.

Underpayment of wages includes straight time not paid as well as overtime, whether or not there is a minimum wage, and may be recovered in the event there is any violation, monetary or otherwise, of any of the stipulations required by section 1 of the Act.

4. RECOVERY OF LIQUIDATED DAMAGES

Any sums of money due to the United States of America may be withheld from any amounts due on any such contracts or may be recovered in suits brought in the name of the United States of America by the Attorney General thereof.—The Act, section 2.

5. PUNISHMENT FOR CONTEMPT

In case of contumacy, failure, or refusal of any person to obey such an order (*order of the Secretary of Labor requiring the attendance and testimony of witnesses and the production of evidence under oath*), any District Court of the United States or of any Territory or possession or the Supreme Court of the District of Columbia, within the jurisdiction of which the inquiry is carried on, or within

the jurisdiction of which said person who is guilty of contumacy, failure, or refusal is found, or resides, or transacts business, upon the application by the Secretary of Labor or representative designated by him, shall have jurisdiction to issue such person an order requiring such person to appear before him, or representative designated by him, to produce evidence if, as, and when so ordered, and to give testimony relating to the matter under investigation or in question, and any failure to obey such order of the court may be punished by said court as a contempt thereof.—The Act, section 5. (*Italics supplied.*)

6. INELIGIBLE LIST

The Secretary of Labor, under the statute, forwards a list to the Comptroller General for distribution to all agencies of the United States containing the names of persons or firms found by the Secretary of Labor to have breached any of the agreements or representations required by this Act. Unless the Secretary of Labor otherwise recommends, no contracts shall be awarded to such persons or firms or to any firm, corporation, partnership, or association in which such persons or firms have a controlling interest until 3 years have elapsed from the date the Secretary of Labor determines such breach to have occurred.—The Act, section 3.

If an employee who testified at a hearing in a matter of alleged violations of the provisions of the Public Contracts Act is discriminated against or refused employment after such hearing, the fact will weigh heavily in the consideration of whether or not the Secretary of Labor will intervene to prevent the operation of section 3 of the Public Contracts Act, which, unless the Secretary so prevents, automatically makes the contractor who has been found to have breached the contract, ineligible to receive Government contracts for a period of 3 years.

7. SPECIAL DEPOSIT ACCOUNT

All sums withheld or recovered as deductions, rebates, refunds, or underpayments of wages shall be held in a special deposit account and shall be paid, on order of the Secretary of Labor, directly to the employees who have been paid less than the minimum rates of pay as set forth in such contracts and on whose account such sums were withheld or recovered: *Provided*, That no claims by employees for such payments shall be entertained unless made within 1 year from the date of actual notice to the contractor of the withholding or recovery of such sums by the United States of America.—The Act, section 2.

Section XII.—EXCEPTIONS AND EXEMPTIONS

Upon a written finding by the head of the contracting agency or department that the inclusion in the proposal or contract of the representations or stipulations set forth in section 1 will seriously impair the conduct of Government business, the Secretary of Labor shall make exceptions in specific cases or otherwise when justice or public interest will be served thereby. Upon the joint recommendation of the contracting agency and the contractor, the Secretary of Labor may modify the terms of an existing contract respecting minimum rates of pay and maximum hours of labor as he may find necessary and proper in the public interest or to prevent injustice and undue hardship. The Secretary of Labor may provide reasonable limitations and may make rules and regulations allowing reasonable variations, tolerances, and exemptions to and from any or all provisions of this Act respecting minimum rates of pay and maximum hours of labor or the extent of the application of this Act to contractors, as hereinbefore described. Whenever the Secretary of Labor shall permit an increase in the maximum hours of labor stipulated in the contract, he shall set a rate of pay for any overtime, which rate shall be not less than one and one-half times the basic hourly rate received by any employee affected.—The Act, section 6.

Requests for the exception or exemption of a contract or class of contracts from the inclusion or application of one or more of those stipulations required by article 1 must be made by the head of a contracting agency or department and shall be accompanied with a finding by him setting forth reasons why such inclusion or application will seriously impair the conduct of Government business. Request for the exception or exemption of a stipulation respecting minimum rates of pay and maximum hours of labor contained in an existing contract must be made jointly by the head of the contracting agency and the contractor and shall be accompanied with a joint finding by them setting forth reasons why such exceptions or exemptions are desired.—Regulations, article 601.

Decisions concerning exceptions or exemptions shall be in writing and approved by the Secretary of Labor or officer prescribed by him, originals being filed in the Department of Labor and certified copies shall be transmitted to the Department or agency originating the request, to the Comptroller General, and to the Procurement Division of the Treasury.—Regulations, article 602.

[PUBLIC—No. 846—74TH CONGRESS]

[S. 3055]

AN ACT

To provide conditions for the purchase of supplies and the making of contracts by the United States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in any contract made and entered into by any executive department, independent establishment, or other agency or instrumentality of the United States, or by the District of Columbia, or by any corporation all the stock of which is beneficially owned by the United States (all the foregoing being hereinafter designated as agencies of the United States), for the manufacture or furnishing of materials, supplies, articles, and equipment in any amount exceeding \$10,000, there shall be included the following representations and stipulations:

(a) That the contractor is the manufacturer of or a regular dealer in the materials, supplies, articles, or equipment to be manufactured or used in the performance of the contract;

(b) That all persons employed by the contractor in the manufacture or furnishing of the materials, supplies, articles, or equipment used in the performance of the contract will be paid, without subsequent deduction or rebate on any account, not less than the minimum wages as determined by the Secretary of Labor to be the prevailing minimum wages for persons employed on similar work or in the particular or similar industries or groups of industries currently operating in the locality in which the materials, supplies, articles, or equipment are to be manufactured or furnished under said contract;

(c) That no person employed by the contractor in the manufacture or furnishing of the materials, supplies, articles, or equipment used in the performance of the contract shall be permitted to work in excess of eight hours in any one day or in excess of forty hours in any one week;

(d) That no male person under sixteen years of age and no female person under eighteen years of age and no convict labor will be employed by the contractor in the manufacture or production or furnishing of any of the materials, supplies, articles, or equipment included in such contract; and

(e) That no part of such contract will be performed nor will any of the materials, supplies, articles, or equipment to be manufactured or furnished under said contract be manufactured or fabricated in any plants, factories, buildings, or surroundings or under working conditions which are insanitary or hazardous or dangerous to the health and safety of employees engaged in the performance of said contract. Compliance with the safety, sanitary, and factory inspec-

tion laws of the State in which the work or part thereof is to be performed shall be prima-facie evidence of compliance with this subsection.

SEC. 2. That any breach or violation of any of the representatives and stipulations in any contract for the purposes set forth in section 1 hereof shall render the party responsible therefor liable to the United States of America for liquidated damages, in addition to damages for any other breach of such contract, the sum of \$10 per day for each male person under sixteen years of age or each female person under eighteen years of age, or each convict laborer knowingly employed in the performance of such contract, and a sum equal to the amount of any deductions, rebates, refunds, or underpayment of wages due to any employee engaged in the performance of such contract; and, in addition, the agency of the United States entering into such contract shall have the right to cancel same and to make open-market purchases or enter into other contracts for the completion of the original contract, charging any additional cost to the original contractor. Any sums of money due to the United States of America by reason of any violation of any of the representations and stipulations of said contract set forth in section 1 hereof may be withheld from any amounts due on any such contracts or may be recovered in suits brought in the name of the United States of America by the Attorney General thereof. All sums withheld or recovered as deductions, rebates, refunds, or underpayments of wages shall be held in a special deposit account and shall be paid, on order of the Secretary of Labor, directly to the employees who have been paid less than minimum rates of pay as set forth in such contracts and on whose account such sums were withheld or recovered: *Provided*, That no claims by employees for such payments shall be entertained unless made within one year from the date of actual notice to the contractor of the withholding or recovery of such sums by the United States of America.

SEC. 3. The Comptroller General is authorized and directed to distribute a list to all agencies of the United States containing the names of persons or firms found by the Secretary of Labor to have breached any of the agreements or representations required by this Act. Unless the Secretary of Labor otherwise recommends no contracts shall be awarded to such persons or firms or to any firm, corporation, partnership, or association in which such persons or firms have a controlling interest until three years have elapsed from the date the Secretary of Labor determines such breach to have occurred.

SEC. 4. The Secretary of Labor is hereby authorized and directed to administer the provisions of this Act and to utilize such Federal officers and employees and, with the consent of the State, such State and local officers and employees as he may find necessary to assist in the administration of this Act and to prescribe rules and regulations with respect thereto. The Secretary shall appoint, without regard to the provisions of the civil-service laws but subject to the Classification Act of 1923, an administrative officer, and such attorneys and experts, and shall appoint such other employees with regard to existing laws applicable to the employment and compensation of officers and employees of the United States, as he may

from time to time find necessary for the administration of this Act. The Secretary of Labor or his authorized representatives shall have power to make investigations and findings as herein provided, and prosecute any inquiry necessary to his functions in any part of the United States. The Secretary of Labor shall have authority from time to time to make, amend, and rescind such rules and regulations as may be necessary to carry out the provisions of this Act.

SEC. 5. Upon his own motion or on application of any person affected by any ruling of any agency of the United States in relation to any proposal or contract involving any of the provisions of this Act, and on complaint of a breach or violation of any representation or stipulation as herein provided, the Secretary of Labor, or an impartial representative designated by him, shall have the power to hold hearings and to issue orders requiring the attendance and testimony of witnesses and the production of evidence under oath. Witnesses shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In case of contumacy, failure, or refusal of any person to obey such an order, any District Court of the United States or of any Territory or possession, or the Supreme Court of the District of Columbia, within the jurisdiction of which the inquiry is carried on, or within the jurisdiction of which said person who is guilty of contumacy, failure, or refusal is found, or resides or transacts business, upon the application by the Secretary of Labor or representative designated by him, shall have jurisdiction to issue to such person an order requiring such person to appear before him or representative designated by him, to produce evidence if, as, and when so ordered, and to give testimony relating to the matter under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof; and shall make findings of fact after notice and hearing, which findings shall be conclusive upon all agencies of the United States, and if supported by the preponderance of the evidence, shall be conclusive in any court of the United States; and the Secretary of Labor or authorized representative shall have the power, and is hereby authorized, to make such decisions, based upon findings of fact, as are deemed to be necessary to enforce the provisions of this Act.

SEC. 6. Upon a written finding by the head of the contracting agency or department that the inclusion in the proposal or contract of the representations or stipulations set forth in section 1 will seriously impair the conduct of Government business, the Secretary of Labor shall make exceptions in specific cases or otherwise when justice or public interest will be served thereby. Upon the joint recommendation of the contracting agency and the contractor, the Secretary of Labor may modify the terms of an existing contract respecting minimum rates of pay and maximum hours of labor as he may find necessary and proper in the public interest or to prevent injustice and undue hardship. The Secretary of Labor may provide reasonable limitations and may make rules and regulations allowing reasonable variations, tolerances, and exemptions to and from any or all provisions of this Act respecting minimum rates of pay and maximum hours of labor or the extent of the application of this Act to contractors, as hereinbefore described. Whenever the Secretary

of Labor shall permit an increase in the maximum hours of labor stipulated in the contract, he shall set a rate of pay for any overtime, which rate shall be not less than one and one-half times the basic hourly rate received by any employee affected.

SEC. 7. Whenever used in this Act, the word "person" includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

SEC. 8. The provisions of this Act shall not be construed to modify or amend title III of the Act entitled "An Act making appropriations for the Treasury and Post Office Departments for the fiscal year ending June 30, 1934, and for other purposes," approved May 3, 1933 (commonly known as the Buy American Act), nor shall the provisions of this Act be construed to modify or amend the Act entitled "An Act relating to the rate of wages for laborers and mechanics employed on public buildings of the United States and the District of Columbia by contractors and subcontractors, and for other purposes," approved March 3, 1931 (commonly known as the Bacon-Davis Act), as amended from time to time, nor the labor provisions of title II of the National Industrial Recovery Act, approved June 16, 1933, as extended, or of section 7 of the Emergency Relief Appropriation Act, approved April 8, 1935; nor shall the provisions of this Act be construed to modify or amend the Act entitled "An Act to provide for the diversification of employment of Federal prisoners, for their training, and schooling in trades and occupations, and for other purposes," approved May 27, 1930, as amended and supplemented by the Act approved June 23, 1934.

SEC. 9. This Act shall not apply to purchases of such materials, supplies, articles, or equipment as may usually be bought in the open market; nor shall this Act apply to perishables, including dairy, livestock and nursery products, or to agricultural or farm products processed for first sale by the original producers; nor to any contracts made by the Secretary of Agriculture for the purchase of agricultural commodities or the products thereof. Nothing in this Act shall be construed to apply to carriage of freight or personnel by vessel, airplane, bus, truck, express, or railway line where published tariff rates are in effect or to common carriers subject to the Communications Act of 1934.

SEPARABILITY CLAUSE

SEC. 10. If any provision of this Act, or the application thereof to any persons or circumstances, is held invalid, the remainder of the Act, and the application of such provisions to other persons or circumstances, shall not be affected thereby.

SEC. 11. This Act shall apply to all contracts entered into pursuant to invitations for bids issued on or after ninety days from the effective date of this Act: *Provided, however*, That the provisions requiring the inclusion of representations with respect to minimum wages shall apply only to purchases or contracts relating to such industries as have been the subject matter of a determination by the Secretary of Labor.

Approved, June 30, 1936.

No. 504 (Amended as of April 1939).—REGULATIONS PRESCRIBED BY THE SECRETARY OF LABOR UNDER PUBLIC ACT NO. 846, SEVENTY-FOURTH CONGRESS

(SERIES A)

By virtue of the authority vested in the Secretary of Labor by section 4 of the act entitled "An act to provide conditions for the purchase of supplies and the making of contracts by the United States, and for other purposes" (act of June 30, 1936, Public, No. 846, 74th Cong.) and in order to establish uniform procedure under said act, the following Regulations are hereby prescribed:

PART I.—CONTRACT STIPULATIONS

ARTICLE 1 (Insertion of Stipulations).—Except as hereinafter directed, in every contract made and entered into by an executive department, independent establishment, or other agency or instrumentality of the United States, or by the District of Columbia, or by any corporation all the stock of which is beneficially owned by the United States, for the manufacture or furnishing of materials, supplies, articles, and equipment, with respect to which invitations for bids are issued on or after September 28, 1936, the contracting officer shall cause to be inserted in such invitation or the specifications and in such contract, the following stipulations:

Representations and stipulations pursuant to Public Act No. 846, Seventy-fourth Congress:

(a) The contractor is the manufacturer of or a regular dealer in the materials, supplies, articles, or equipment to be manufactured or used in the performance of the contract.

(b) All persons employed by the contractor in the manufacture or furnishing of the materials, supplies, articles, or equipment used in the performance of the contract will be paid, without subsequent deduction or rebate on any account, not less than the minimum wages as determined by the Secretary of Labor to be the prevailing minimum wages for persons employed on similar work or in the particular or similar industries or groups of industries currently operating in the locality in which the materials, supplies, articles, or equipment are to be manufactured or furnished under the contract: *Provided, however*, That this stipulation with respect to minimum wages shall apply only to purchases or contracts relating to such industries as have been the subject matter of a determination by the Secretary of Labor.

(c) No person employed by the contractor in the manufacture or furnishing of the materials, supplies, articles, or equipment used in the performance of

the contract shall be permitted to work in excess of 8 hours in any 1 day or in excess of 40 hours in any 1 week, unless such person is paid such applicable overtime rate as has been set by the Secretary of Labor.

(d) No male person under 16 years of age and no female person under 18 years of age and no convict labor will be employed by the contractor in the manufacture or production or furnishing of any of the materials, supplies, articles, or equipment included in the contract.

(e) No part of the contract will be performed nor will any of the materials, supplies, articles, or equipment to be manufactured or furnished under said contract be manufactured or fabricated in any plants, factories, buildings, or surroundings or under working conditions which are insanitary or hazardous or dangerous to the health and safety of employees engaged in the performance of the contract. Compliance with the safety, sanitary, and factory inspection laws of the State in which the work or part thereof is to be performed shall be prima-facie evidence of compliance with this subsection.

(f) Any breach or violation of any of the foregoing representations and stipulations shall render the party responsible therefor liable to the United States of America for liquidated damages, in addition to damages for any other breach of the contract, in the sum of \$10 per day for each male person under 16 years of age or each female person under 18 years of age, or each convict laborer knowingly employed in the performance of the contract, and a sum equal to the amount of any deductions, rebates, refunds, or underpayment of wages due to any employee engaged in the performance of the contract; and, in addition, the agency of the United States entering into the contract shall have the right to cancel same and to make open-market purchases or enter into other contracts for the completion of the original contract, charging any additional cost to the original contractor. Any sums of money due to the United States of America by reason of any violation of any of the representations and stipulations of the contract as set forth herein may be withheld from any amounts due on the contract or may be recovered in a suit brought in the name of the United States of America by the Attorney General thereof. All sums withheld or recovered as deductions, rebates, refunds, or underpayments of wages shall be held in a special deposit account and shall be paid, on order of the Secretary of Labor, directly to the employees who have been paid less than minimum rates of pay as set forth in such contracts and on whose account such sums were withheld or recovered: *Provided*, That no claims by employees for such payments shall be entertained unless made within 1 year from the date of actual notice to the contractor of the withholding or recovery of such sums by the United States of America.

(g) The contractor shall post a copy of the stipulations in a prominent and readily accessible place at the site of the contract work and shall keep such employment records as are required in the Regulations under the act available for inspection by authorized representatives of the Secretary of Labor.

(h) The foregoing stipulations shall be deemed inoperative if this contract is for a definite amount not in excess of \$10,000.

ART. 2 (Statutory Exemptions).—Inclusion of the stipulations herein enumerated is not required in the following instances:

(a) Where the contracting officer is authorized by statute or otherwise to purchase in the open market without advertising for proposals;

(b) Where the contract relates to perishables, including dairy, livestock, and nursery products ("perishables" cover products subject to decay or spillage and not products canned, salted, smoked, or otherwise preserved);

(c) Where the contract relates to agricultural or farm products processed for first sale by the original producers;

(d) Where the contract is by the Secretary of Agriculture for the purchase of agricultural commodities or the products thereof;

(e) Where the contract is with a common carrier for carriage of freight or personnel by vessel, airplane, bus, truck, express, or railway line, where published tariff rates are in effect;

(f) Where the contract is for the furnishing of service by radio, telephone, telegraph, or cable companies, subject to the Federal Communications Act of 1934.

PART II.—ADMINISTRATIVE REGULATIONS

ART. 101 (Manufacturer or Regular Dealer).—A bidder or contractor shall be deemed to be a "manufacturer" or "regular dealer" within the meaning of the stipulation required by section 1 (a) of the act and article 1 (a) of these Regulations if he falls within one of the following categories:

(a) A manufacturer is a person who owns, operates, or maintains a factory or establishment that produces on the premises the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.

(b) A regular dealer is a person who owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles, or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and sold to the public in the usual course of business.

(1) A regular dealer in lumber and timber products, if a wholesale lumber dealer, may be a person who owns, operates, or maintains a place of business in which the materials, supplies, articles, or equipment of the general character described by the specifications and required under the contract are bought for the account of such person and sold to the public in the usual course of business: *Provided*, That at least more than 50 percent of his business is such purchase and sale of such materials, supplies, articles, or equipment; and, *Provided further*, That upon all orders to manufacturers for direct shipment to the United States he agrees to insert a notice to the manufacturer to the effect that the supplies are purchased for the United States and that the manufacturer is within the terms of article 101 of these Regulations requiring compliance with the provisions of the Public Contracts Act.

(2) A regular dealer in coal may be a person who owns, operates, or maintains a place of business in which the materials, supplies, articles, or equipment of the general character described by the specifications and required under the contract are bought for the account of such person and sold to users or other trade outlets in the usual course of business in lots of not less than a cargo or railroad carload.

(3) A machine tool dealer may be a person possessing, through contract or agreement with a manufacturer, the responsibility for selling that manufacturer's products, with respect to a specific territory and who is authorized by such manufacturer to offer its products and to negotiate and conclude contracts for

the furnishing thereof: *Provided*, That upon all orders to manufacturers for direct shipment to the United States he agrees to insert a notice to the manufacturer to the effect that the supplies are purchased for the United States and that the manufacturer is within the terms of article 104 of these Regulations requiring compliance with the provisions of the Public Contracts Act.

(4) A regular dealer in hay, grain, feed, or straw may be a person who owns, operates, or maintains a store, warehouse, or other place of business in which the materials, supplies, articles, or equipment of the general character described by the specifications and required under the contract are bought for the account of such person and sold to the public in the usual course of business, and whose principal business is such purchase and sale of such materials, supplies, articles, or equipment.

Except as hereinafter provided, every bid received from any bidder who does not fall within one of the foregoing categories shall be rejected by the contracting officer.

Whenever justice and the public interest will be served, bids for a contract or class of contracts will be exempted from the foregoing requirement by the Secretary of Labor upon the request of the head of the contracting agency or department when accompanied by his finding of fact that it will be so difficult to obtain satisfactory bids for the contract or class of contracts under the stipulated restrictions, that the conduct of Government business will be seriously impaired.

Arr. 102 (*Employees Affected*).—The stipulations shall be deemed applicable only to employees engaged in or connected with the manufacture, fabrication, assembling, handling, supervision, or shipment of materials, supplies, articles, or equipment required under the contract and shall not be deemed applicable to office or custodial employees.

Arr. 103 (*Overtime*).—Employees engaged in or connected with the manufacture, fabrication, assembling, handling, supervision, or shipment of materials, supplies, articles, or equipment used in the performance of the contract may be employed in excess of 8 hours in any 1 day or in excess of 40 hours in any 1 week, provided such persons shall be paid for any hours in excess of such limits the overtime rate of pay which has been set therefor by the Secretary of Labor.

Until otherwise set by the Secretary of Labor the rate of pay for such overtime shall be one and one-half times the basic hourly rate or piece rate received by the employee.

If in any 1 week or part thereof an employee is engaged in work covered by the contractor's stipulations, his overtime shall be computed after 8 hours in any 1 day or after 40 hours in any 1 week during which no single daily total of employment may be in excess of 8 hours without payment of the overtime rate.

Arr. 104 (*Dealer as Agent of Undisclosed Principal*).—Whenever a dealer, to whom a contract within the act and Regulations has been awarded, causes a manufacturer to deliver directly to the Govern-

ment the materials, supplies, articles, or equipment required under the contract, such dealer will be deemed the agent of the manufacturer in executing the contract. As the principal of such agent the manufacturer will be deemed to have agreed to the stipulations contained in the contract.

Arr. 201 (*Breach of Stipulations*).—Whenever the Department of Labor notifies the head of a contracting agency that a contractor is liable for liquidated damages by reason of a breach of stipulations as provided in section 2 of the act, there shall be withheld from any balance due under the contract such amount as may be necessary to satisfy such liability pending final disposition of the case.

Whenever a final determination of a breach of stipulations is made, the Secretary of Labor will furnish to the contracting agency a copy of the findings and decision with such recommendations as will assist the contracting agency in determining whether or not the contract should be canceled for such breach.

Arr. 501 (*Records of Employment*).—Every contractor subject to the provisions of the act and these Regulations shall maintain the following records of employment which shall be available for the inspection and transcription of authorized representatives of the Secretary of Labor:

(a) Name, address, sex, and occupation of each employee covered by the contract stipulations.

(b) Date of birth of each such employee under 21 years of age.

(c) Wage and hour records for each such employees including the rate of wages and the amount paid each pay period, the hours worked each day and each week, and the period during which each such employee was engaged on a Government contract with the number of such contract. Compliance with this subsection shall be deemed complete if wage-and-hour records for all employees in the plant are maintained during the period between the award of any Government contract and the date of delivery of the materials, supplies, articles, or equipment: *Provided*, That where no separate records for employees engaged on Government contracts are maintained, it shall be presumed until affirmative proof is present to the contrary that all employees in the plant, from the date of award of any such contract until the date of delivery of the materials, supplies, articles or equipment, were engaged on such Government contract.

Such records shall be kept on file for at least 1 year after the termination of the contract.

Arr. 601 (*Requests for Exceptions and Exemptions*).—Request for the exception or exemption of a contract or class of contracts from the inclusion or application of one or more of those stipulations required by article 1 must be made by the head of a contracting agency or department and shall be accompanied with a finding by him setting forth reasons why such inclusion or application will seriously impair the conduct of Government business.

Request for the exception or exemption of a stipulation respecting minimum rates of pay and maximum hours of labor contained in an existing contract must be made jointly by the head of the contracting agency and the contractor and shall be accompanied with a joint finding by them setting forth reasons why such exception or exemption is desired.

All requests for exceptions or exemptions shall be transmitted through the Procurement Division of the Treasury for submission to the Department of Labor for consideration and shall be returned through the Procurement Division.

ART. 602 (Decisions Concerning Exceptions and Exemptions).—Decisions concerning exceptions and exemptions shall be in writing and approved by the Secretary of Labor or officer prescribed by him, originals being filed in the Department of Labor, and certified copies shall be transmitted to the department or agency originating the request, to the Comptroller General, and to the Procurement Division of the Treasury. All such decisions shall be promulgated to all contracting agencies by the Procurement Division of the Treasury.

ART. 603 (Administrative Exemptions).—The following classes of contracts have been exempted from the application of article 1 of these Regulations pursuant to the procedure required under section 6 of the act:

(a) Contracts for public utility services including electric light and power, water, steam, and gas;

(b) Contracts which are to be performed outside the geographic limits of the United States, its territories, and the District of Columbia, except where such performance requires a shipment from within such geographic limits;

(c) Contracts covering purchases against the account of a defaulting contractor where the stipulations required herein were not included in the defaulted contract.

ART. 701 (Definition of "Person").—Whenever used in these Regulations, the word "person" includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

ART. 1101 (Minimum Wages).—Until a determination of the prevailing minimum wage for a particular industry or group of industries has been made by the Secretary of Labor prior to the invitation for bids, the stipulation with respect to wages in section 1 (b) of the act will be inoperative, as provided in article 1 (b) of these Regulations.

Determinations of prevailing minimum wages or changes therein will be published in the Federal Register and sent to contracting officers through circular letters of the Procurement Division of the Treasury. Such determinations will be effective upon the dates fixed therein.

ART. 1201 (Reports of Contracts Awarded).—Whenever the contracting officer shall award a contract in which the stipulations required under article 1 are operative, he shall furnish the Department of Labor in duplicate on forms provided for this purpose, a statement showing the name of the contracting agency, the purchase order number, the material purchased, the date of award, the contract price, the proposed date of delivery, the contractor's name and address, and the name and location of the plant or plants fabricating or supplying the subject matter of the contract.

ART. 1202 (Complaints).—Whenever any officer or employee of the United States Government or of any agency thereof has any knowledge of or receives any complaint with respect to a breach or violation of the stipulations required under article 1, he shall transmit such complaint according to the usual practice in his department to the Department of Labor together with such other information as he has in his possession.

ART. 1203 (Other Contracts).—Nothing in these Regulations shall be construed as impairing the authority possessed by any contracting agency to require labor standards in contracts not covered by this act.

FRANCES PERKINS,
Secretary of Labor.

WASHINGTON, D. C., September 14, 1930.

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WALSH-HEALEY

Public Contracts Act

(Public No. 846, Seventh-fourth Congress
Approved June 30, 1936; 49 Stat. 2036; U. S. C., title 41, secs. 35-45)

Rulings and Interpretations No. 3

Superseding No. 1, and No. 2, and Supplement

OCTOBER 1, 1945



UNITED STATES DEPARTMENT OF LABOR

L. B. SCHWELLENBACH, *Secretary*

WAGE AND HOUR AND PUBLIC CONTRACTS DIVISIONS
L. Metcalfe Walling, *Administrator*

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Foreword

This pamphlet contains the text of the Walsh-Healey Public Contracts Act (49 Stat. 2036; U. S. C., ti. 41, Secs. 35-45) and the Regulations of the Secretary of Labor thereunder. In addition, the most important rulings and interpretations of general interest and pertinent opinions of the Comptroller General are included in this compilation which is intended to replace Rulings and Interpretations No. 2, issued September 29, 1939, and the Supplement to it, issued January 24, 1944. Most of the changes from Rulings and Interpretations No. 2 are the result of the addition of the material contained in the Supplement. However, several additional changes have been made. Prior rulings or interpretations which are inconsistent with those in this pamphlet are superseded.

This pamphlet is the only official compilation of interpretative material on this Act. Any amendments or additions will be given the widest possible publicity. The practice of sending a copy of this pamphlet to every contractor who may be subject to the provisions of this Act will be continued as far as possible.

Requests for further rulings and interpretations covering definite points should be submitted to the Wage and Hour and Public Contracts Divisions, United States Department of Labor. In addition to their national office, the Divisions maintain regional offices in the following cities: Atlanta, Ga.; Birmingham, Ala.; Boston, Mass.; Chicago, Ill.; Cleveland, Ohio; Dallas, Tex.; Kansas City, Mo.; Minneapolis, Minn.; Nashville, Tenn.; New York, N. Y.; Philadelphia, Pa.; Richmond, Va.; San Francisco, Calif.; San Juan, P. R.

L. METCALFE WALLING,
Administrator.

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Rulings and Interpretations Under the Walsh-Healey Public Contracts Act

(Revised)

Part I. Coverage

SECTION 1. IN GENERAL

(a) The Public Contracts Act applies to "any contract made and entered into by any executive department, independent establishment, or other agency or instrumentality of the United States, or by the District of Columbia, or by any corporation all the stock of which is beneficially owned by the United States (all the foregoing being hereinafter designated as agencies of the United States), for the manufacturing or furnishing of materials, supplies, articles, or equipment in any amount exceeding \$10,000." The Act, Section 1.

SECTION 2. CONTRACTING AGENCIES

(a) The Defense Plant Corporation, as well as other subsidiary corporations of the Reconstruction Finance Corporation, are agencies or instrumentalities of the United States within the meaning of section 1 of the Act.

(b) Contracts awarded by the offices of the Panama Canal are subject to the Act, such offices being an agency of the United States within the meaning of section 1 of the Act.

(c) The Governments of Alaska, Hawaii, and Puerto Rico are not agencies or instrumentalities of the United States within the meaning of section 1. Consequently, contracts awarded by any of these Governments or any agency thereof are not subject to the provisions of the Public Contracts Act.

(d) The American Red Cross and the Salvation Army are not such agencies or instrumentalities of the United States, and contracts awarded by either organization are not subject to the provisions of the Act. A contract awarded by an agency of the United States for the benefit of the Red Cross, however, such as those authorized by section

40 of Pub. Res. 88, 76th Cong., approved June 26, 1940, should include the stipulations required by the Public Contracts Act unless the agency elects otherwise as permitted in such a provision as paragraph 40 (c) of the joint resolution.

(e) The Public Contracts Act does not apply to any contract awarded by a State or political subdivision thereof or by an agency of the State or political subdivision even though Federal funds are used in payment for the materials, supplies, articles, or equipment required under such contract.

SECTION 3. AMOUNT INVOLVED

(a) *Indefinite amount.*—All contracts which may exceed \$10,000 should include the stipulations required by the Act unless the contracting officer knows in advance that the total amount of the contract will not exceed \$10,000 in any event.

(b) *Reduction for prompt payment.*—If a contract is awarded for an amount in excess of \$10,000 the stipulations required by the Act should be included, notwithstanding the fact that prompt payment may reduce the actual expenditure below \$10,000. "The total price named in the contract is the contract price insofar as the application of the said Act is concerned, any reduction therein being dependent upon a condition subsequent to the contract." 16 Comp. Gen. 583; 16 Comp. Gen. 605.

(c) *Trade-in allowance.*—Trade-in allowances should not be deducted from the bid price in determining whether the contract is in excess of \$10,000. The contract price rather than the means of payment is the controlling factor. 16 Comp. Gen. 605.

(d) *Installment delivery.*—Contracts which exceed or may exceed \$10,000 come within the Act, irrespective of whether the material is delivered in installments or in one lot.

(e) *Contracts for separate items (1).*—When an invitation is issued for bids on a variety of items totaling more than \$10,000, subject to the Act, and bidders are permitted to bid on any one or more of the items amounting to less than \$10,000, awards made to different bidders for \$10,000 or less are not subject to the Act.

(2) If one contract is awarded containing several schedules for separate items, and if the total price of the contract is in excess of \$10,000, the contract is subject to the Act, even though each item is manufactured by a different concern, and the amount of each item is less than \$10,000.

(3) Where a single award is made in an amount exceeding \$10,000 on a single invitation, and for reasons of convenience several formal contracts are issued covering the award, each such contract is subject to the provisions of the Act, although each may happen to be for a sum less than \$10,000.

(f) Awards aggregating less than \$10,000 on bids exceeding that amount.

When a person bids on several items of equipment of an aggregate value in excess of \$10,000 and is the low bidder on only a few items of an aggregate value not in excess of \$10,000, his contract for those few items is not subject to the Act. 16 Comp. Gen. 744.

(g) *Inclusion of freight in contract price.*

The total contract price is the determining factor as to whether the Public Contracts Act applies to a Government contract for materials, supplies, articles, or equipment. If a contract as awarded is for an amount in excess of \$10,000 and requires the materials to be delivered by the contractor to the destination designated by the Government, the stipulations of the Act are required to be included in the contract even though the amount paid by the contractor for freight charges reduces to a figure below \$10,000 the amount actually received by him for the goods.

SECTION 4. PLACE OF PERFORMANCE

(a) The Public Contracts Act does not apply to "contracts which are to be performed outside the geographic limits of the United States, its territories and the District of Columbia, except where such performance requires a shipment from within such geographic limits." Regulations, Article 603 (b).

(b) Contracts to be performed in the United States, the District of Columbia, Alaska, and Hawaii are subject to the provisions of the Public Contracts Act. Contracts to be performed outside the United States and the Territories mentioned are not subject to the provisions of the Act unless the performance of such contracts requires the shipment of the materials therefrom, in which event compliance with the Act and Regulations thereunder need be shown only as to operations within the United States and such Territories.

SECTION 5. ASSEMBLING

(a) A contract for an article which is produced by assembling miscellaneous parts purchased by the contractor from others is a contract to manufacture an article in the sense in which that term is used in the Public Contracts Act.

SECTION 6. CONTRACTS INVOLVING CONSTRUCTION

(a) Contracts for the construction of public works including buildings and bridges (as to ships including United States naval vessels, see sec. 7 below) are not subject to the Public Contracts Act and contractors performing such contracts may use in such construction mate-

40 of Pub. Res. 88, 76th Cong., approved June 26, 1940, should include the stipulations required by the Public Contracts Act unless the agency elects otherwise as permitted in such a provision as paragraph 40 (c) of the joint resolution.

(e) The Public Contracts Act does not apply to any contract awarded by a State or political subdivision thereof or by an agency of the State or political subdivision even though Federal funds are used in payment for the materials, supplies, articles, or equipment required under such contract.

SECTION 3. AMOUNT INVOLVED

(a) *Indefinite amount.*—All contracts which may exceed \$10,000 should include the stipulations required by the Act unless the contracting officer knows in advance that the total amount of the contract will not exceed \$10,000 in any event.

(b) *Reduction for prompt payment.*—If a contract is awarded for an amount in excess of \$10,000 the stipulations required by the Act should be included, notwithstanding the fact that prompt payment may reduce the actual expenditure below \$10,000. "The total price named in the contract is the contract price insofar as the application of the said Act is concerned, any reduction therein being dependent upon a condition subsequent to the contract." 16 Comp. Gen. 583; 16 Comp. Gen. 605.

(c) *Trade-in allowance.*—Trade-in allowances should not be deducted from the bid price in determining whether the contract is in excess of \$10,000. The contract price rather than the means of payment is the controlling factor. 16 Comp. Gen. 605.

(d) *Installment delivery.*—Contracts which exceed or may exceed \$10,000 come within the Act, irrespective of whether the material is delivered in installments or in one lot.

(e) *Contracts for separate items (1).*—When an invitation is issued for bids on a variety of items totaling more than \$10,000, subject to the Act, and bidders are permitted to bid on any one or more of the items amounting to less than \$10,000, awards made to different bidders for \$10,000 or less are not subject to the Act.

(2) If one contract is awarded containing several schedules for separate items, and if the total price of the contract is in excess of \$10,000, the contract is subject to the Act, even though each item is manufactured by a different concern, and the amount of each item is less than \$10,000.

(3) Where a single award is made in an amount exceeding \$10,000 on a single invitation, and for reasons of convenience several formal contracts are issued covering the award, each such contract is subject to the provisions of the Act, although each may happen to be for a sum less than \$10,000.

(f) Awards aggregating less than \$10,000 on bids exceeding that amount.

When a person bids on several items of equipment of an aggregate value in excess of \$10,000 and is the low bidder on only a few items of an aggregate value not in excess of \$10,000, his contract for those few items is not subject to the Act. 16 Comp. Gen. 744.

(g) *Inclusion of freight in contract price.*

The total contract price is the determining factor as to whether the Public Contracts Act applies to a Government contract for materials, supplies, articles, or equipment. If a contract as awarded is for an amount in excess of \$10,000 and requires the materials to be delivered by the contractor to the destination designated by the Government, the stipulations of the Act are required to be included in the contract even though the amount paid by the contractor for freight charges reduces to a figure below \$10,000 the amount actually received by him for the goods.

SECTION 4. PLACE OF PERFORMANCE

(a) The Public Contracts Act does not apply to "contracts which are to be performed outside the geographic limits of the United States, its territories and the District of Columbia, except where such performance requires a shipment from within such geographic limits." Regulations, Article 603 (b).

(b) Contracts to be performed in the United States, the District of Columbia, Alaska, and Hawaii are subject to the provisions of the Public Contracts Act. Contracts to be performed outside the United States and the Territories mentioned are not subject to the provisions of the Act unless the performance of such contracts requires the shipment of the materials therefrom, in which event compliance with the Act and Regulations thereunder need be shown only as to operations within the United States and such Territories.

SECTION 5. ASSEMBLING

(a) A contract for an article which is produced by assembling miscellaneous parts purchased by the contractor from others is a contract to manufacture an article in the sense in which that term is used in the Public Contracts Act.

SECTION 6. CONTRACTS INVOLVING CONSTRUCTION

(a) Contracts for the construction of public works including buildings and bridges (as to ships including United States naval vessels, see sec. 7 below) are not subject to the Public Contracts Act and contractors performing such contracts may use in such construction mate-

rials, supplies, articles, or equipment manufactured or furnished by them without showing compliance with the Act.

(b) Contracts ordinarily awarded to manufacturers or of dealers in articles or equipment for the manufacture or furnishing of articles or equipment and which exceed or may exceed \$10,000 are subject to the Public Contracts Act even though such contracts call for the erection or installation of the articles or equipment after delivery. If such a contract involves more than an incidental amount of erection or installation work it may also be subject to the Davis-Bacon Act with respect to such work if the site of such work is known at the time the invitation to bid is issued. Examples of such contracts are those for the manufacture or furnishing and installation of elevators or of generators requiring prepared foundations or housing.

(c) Questions concerning the applicability of either Act to any contract or to any persons employed in performance of such contracts should be referred to the Department of Labor for opinion.

SECTION 7. BOATS AND SHIPS

(a) Contracts to manufacture or furnish small vessels such as canoes, rowboats, and launches are contracts for the manufacture or furnishing of equipment and are subject to the Act. The construction of ships, except as provided in subsections (b), (c), and (d) below, is not subject to the Act.

(b) Section 12 of the Act of May 17, 1938 (52 Stat. 403, 34 U. S. C. 496K) and Section 8 of the Act of June 14, 1940, (54 Stat. 395, 34 U. S. C. 498L) enlarged the application of the Public Contracts Act by providing that the construction, alteration, furnishing, or equipping of any naval vessels shall be in accordance with the provisions of the Public Contracts Act, unless such course, in the judgment of the President of the United States, should not be in the public interest.

(c) These statutes do not extend the jurisdiction of the Public Contracts Act to the construction, alteration, furnishing, or equipping of all ships, but only to such activities when they are performed on naval vessels. Accordingly, these acts would not subject to the Public Contracts Act the construction of a merchant ship under a contract let by the United States Maritime Commission.

(d) Under these statutes all work of the kinds described must be performed in accordance with the provisions of the Public Contracts Act whether the work is performed by a primary contractor or by a secondary contractor. A secondary contractor who is not himself engaged in the construction, alteration, furnishing, or equipping of a naval vessel is not by reason of these Acts brought within the purview of the Public Contracts Act merely because he manufactures materials used in shipbuilding or furnishes them to shipbuilding firms having contracts to construct such vessels.

SECTION 8. USED OR SECOND-HAND EQUIPMENT

(a) There is no exception in favor of used or second-hand equipment, and all contracts for such equipment in any amount in excess of \$10,000 must contain the representations and stipulations of the Act.

SECTION 9. AGRICULTURAL OR FARM PRODUCTS

(a) The Act does not apply to "agricultural or farm products processed for first sale by the original producers." The Act, Section 9.

(b) Section 9 of the Public Contracts Act excluding agricultural products from the purview of the Act extends to the first sale by the original producer of all products which are the result of operations incidental to or performed in conjunction with farming operations as well as those products raised by farmers as a result of planting or cultivation.

(c) Under this interpretation, forestry and lumbering operations are not within the agricultural exemption of section 9 of the Act except when performed by a farmer or on a farm, and then only when performed as an incident to or in conjunction with such farming operations. Lumbering operations would not, therefore, be within the exemption merely because the lumber operator does some farming or resorts to tilling a small acreage in an attempt to qualify for the exemption.

(d) The statutory exclusion applies if the first sale by the original producer is to a Government agency. If, however, the first sale by the original producer is not to a Government agency, any sale thereafter to a Government agency is subject to the provisions of the Act. Agricultural or farm products held in a warehouse that issues warehouse receipts, which are purchased by a contractor who sells the products to the Government, do not come within the statutory exclusion. The following examples illustrate the application of the exemption:

(1) Contracts entered into by Government agencies for the purchase of raw unprocessed cotton from the grower are not subject to the provisions of the Act.

(2) When the contractor raises and cans his own fruit or vegetable products, the canning by him is exempt from the provisions of the Act as an agricultural product processed for first sale by the original producer.

(e) The exclusion of "agricultural or farm products processed for first sale by the original producers" from the operation of the Act applies only when the same person or a single legal entity is both the original producer and the processor. Cooperative associations or corporations that can or bottle the produce of individual grower members are regarded as being entities separate from the individual grower members of such associations or corporations. Consequently, the

processing of products by such an association or corporation is subject to the provisions of the Act.

SECTION 10. DAIRY, LIVESTOCK, AND NURSERY PRODUCTS

(a) Section 9 of the Act does not operate to exclude all dairy, livestock, and nursery products, but only those which are perishable in fact. See section 11, below.

SECTION 11. PERISHABLES

(a) The Act does not "apply to perishables, including dairy, livestock, and nursery products." The Act, section 9.

(b) "Perishables" cover products subject to decay or spoilage and not products canned, salted, smoked, or otherwise preserved. The Regulations, article 2 (b).

(c) A contract for a commodity which has been processed or packaged before delivery to the Government in such a manner that it is no longer perishable at that time is not within the statutory exclusion even though it may have been perishable before the processing or packaging or may in its processed or packaged form be perishable under unusual climatic conditions. A commodity is not regarded as a perishable at the time of delivery, unless under ordinary circumstances some affirmative and continued step such as refrigeration is necessary to preserve it from spoilage or decay within a short period of time.

(d) Where a contract is awarded for both perishables and nonperishables, that portion of the contract requiring perishables is exempt; the portion requiring nonperishables is not exempt if the value of the nonperishables exceeds \$10,000.

(e) Photographic film and paper are not considered perishables within the meaning of the Act. Ready mix or transit mix concrete and hot mix or cold mix bituminized aggregates are likewise not perishables within the meaning of the Act, for the reason that there is no quality of perishableness inherent in such items or in any of their component parts. They are merely kept in a superimposed condition for a short time during a certain period of processing preparatory to a change into another condition. Similarly, ice is not considered to be a perishable within the meaning of the Act. On the other hand, a contract for the supplying and planting of small trees which are required to be planted within 36 hours to avoid spoilage is within the exemption provided in section 9. A contract for mattress lumber, which must be green when delivered, is included within the exemption for perishables.

(f) In calling for bids for items which are or may be perishables the contracting officer shall follow the determinations of perishability made by the Department of Labor as shown by the lists of perishable

and nonperishable commodities contained in this section and any supplemental listings or determinations which may be made. In making these determinations of perishability, the advice and recommendations, if any, of the Federal Specifications Board will be given particular weight.

(g) If the contracting officer believes that a commodity not listed by the Department of Labor as either a perishable or a nonperishable may be a perishable, he should submit a request to the Department of Labor for a determination for that commodity before calling for bids on a contract to manufacture or furnish that commodity. However, where the public exigency does not allow sufficient time to permit the contracting officer to obtain a determination as to any commodity not listed by the Department of Labor as either a perishable or a nonperishable and the contracting officer determines that the commodity for which a contract is to be let is a perishable within the meaning of the Act and the Regulations, he may omit the stipulations of the Public Contracts Act from the particular contract proposal under consideration, provided, that at that time he forwards a copy of his determination, together with a statement identifying the particular contract, to the Administrator of the Wage and Hour and Public Contracts Divisions. Any such determination is subject to review by the Department of Labor, which is charged with the administration of the Act. However, unless it is patently erroneous, the contracting officer's determination will be regarded as final with respect to the particular contract.

(h) The following commodities have been determined to be perishables:

Biologicals which must be kept under refrigeration to avoid spoilage.
Bread, soft.

Dairy products; butter; buttermilk; cheese (except sealed in tins or glass); fluid or frozen milk or cream (except canned evaporated or condensed); ice cream; dry powdered whole milk and ice cream mix (except when packed with inert gas in hermetically sealed cans).

Eggs, shell, frozen, or dehydrated.

Fish and seafood (except salted, smoked or otherwise preserved, when sealed in tins or glass).

Fruits and berries, fresh or frozen.

Lard, shortening.

Lumber, mattress, green.

Meat, all products (except pork feet, cured, spiced, and pickled) not sealed in tins or glass; and luncheon meat in tins of over two pounds and other meats canned in tins holding six pounds and over, unless the contract requires sterilization.

Nursery products, live.

Oleomargarine.

Poultry, except canned in tins or glass.

Vegetables, fresh or frozen, and potato chips.

Vegetable shortening.

Yeast, compressed.

(i) The following commodities have been determined to be non-perishable:

Bakery products: cookies, crackers and cracker sandwiches, cracker meal, fruit cake, hard bread, ice cream cones, pretzels, and sweetbreads.

Baking powder and other leavening compounds.

Beef extract and bouillon cubes.

Beverages, bottled.

Candy.

Cereals and cereal preparations.

Cheese sealed in tins or glass.

Chewing gum.

Chocolate, plain or milk.

Coconut, prepared, dried, or moist.

Coffee, coffee substitutes, tea, cocoa, chocolate, and similar beverage preparations.

Cornstarch.

Dressings, salad, including mayonnaise.

Fish and seafood products, salted, smoked, or otherwise preserved, when sealed in tins or glass.

Flavoring extracts and food coloring.

Flour and related products.

Fruits or fruit juices, sealed in tins or glass.

Fruits, dried, evaporated, or dehydrated.

Honey, molasses, and sirups.

Jams, jellies, marmalades, preserves, cranberry sauce and fruit butters, in tins or glass.

Meat sealed in tins or glass (except luncheon meat in tins of over 2 pounds and other meats canned in tins holding 6 pounds and over, unless the contract requires sterilization).

Macaroni, spaghetti, and noodles.

Marshmallows, in tins or cartons.

Milk and cream: canned evaporated or condensed; dry non-fat milk solids (dry skimmed milk); malted milk; paste ice cream mix sealed in tins; dry powdered whole milk and ice cream mix when packed with inert gas in hermetically sealed cans.

Miscellaneous food products, sealed in tins or glass, including chili con carne, chop suey, chow mein, hash, mince meat, peanut butter, pudding, and tamales.

Nuts, in shell or in tins or glass.

Oil, olive and vegetable.

Peel, citron, lemon, or orange.

Pickled fruits and vegetables in tins or glass, including capers, horseradish, olives, onions, pickles, pimientos, and relish.

Pork feet, cured, spiced, and pickled.

Poultry, canned in tins or glass.

Powders, dessert, gelatine, and meringue.

Salt.

Sauces, seasonings, and spices.

Soup.

Soups, canned or dehydrated.

Sugar.

Tapoca.

Vegetables and vegetable juices, sealed in tins or glass.

Vegetables, dehydrated, dried, or evaporated.

Vinegar.

Yeast, dried.

SECTION 12. CONTRACTS BY SECRETARY OF AGRICULTURE

(a) The Act does not apply to "contracts made by the Secretary of Agriculture for the purchase of agriculture commodities or the products thereof." The Act, section 9.

(b) Section 9 of the Act does not operate to exclude from the purview of the Act all purchases of agricultural commodities or products thereof which are made by the Secretary of Agriculture. On the basis of the legislative history of the Act and of the exemption, the Department has ruled that the exemption is confined to purchases under the Agricultural Adjustment Act program or for purposes within the general scope and aim of that program, such as stabilization and increase of market prices to farmers. Other purchases of agricultural commodities or the products thereof for other purposes are not within the exemption. For example, purchases made by the Secretary of Agriculture on behalf of, or to supply the needs of, another Government agency would not fall within the intent of the exemption.

(c) Contracts awarded by agencies within the Department of Agriculture exercising powers granted to the Secretary of Agriculture are considered to be within the exemption to the same extent as if they had been awarded directly by the Secretary of Agriculture. Examples of agencies exercising such powers under existing statutes and executive orders are the Federal Surplus Commodities Corporation, the War Food Administration, and the Commodity Credit Corporation.

(d) The phrase "agricultural commodities or the products thereof" includes crop and tree seeds. It does not, however, embrace such things as fertilizer, harvesting machines, or other items which are extraneous aids to the production of agricultural products and are not in themselves agricultural commodities or products.

SECTION 13. OPEN-MARKET PURCHASES

(a) The Public Contracts Act does "not apply to purchase of such materials, supplies, articles, or equipment as may usually be bought in the open market." The Act, section 9.

(b) The stipulations set forth in the Act and Article 1 of the Regulations need not be included in the contract "where the contracting officer is authorized by the express language of a statute to purchase 'in the open market,' or where a purchase of articles, supplies, materials, or equipment, either in being or virtually so, is made without advertising for bids under circumstances bringing such purchases within the exception to the General Purchase Statute, R. S. 3709, that is, where immediate delivery is required by the public exigency."—Regulations, Article 2 (a).

(c) Open-market purchases in a general sense include purchases made at places where the particular articles are bought and sold in the manner in which purchases are ordinarily made between individuals, that is, without advertising for bids. However, the open-market purchase exemption in the Public Contracts Act (section 9) by its terms applies only to such purchases as the Government usually makes in the open market.

(d) The usual method of open-market procurement by the Government includes purchases of two types: (1) purchases without advertising for bids under circumstances bringing the purchase within the exception to the General Purchase Statute, R. S. 3709, that is, where the public exigency requires immediate delivery of the goods; and (2) purchases of goods which the procurement agency is authorized by the express language of a statute to buy "in the open market." Therefore, section 9 of the Public Contracts Act exempts only purchases of the above two types. The mere fact that the procurement agency is authorized to buy "without regard to the provisions of R. S. 3709" is not controlling.

SECTION 14. PUBLIC UTILITIES

(a) The Act does not apply to "common carriers subject to the Communications Act of 1934."—The Act, Section 9.

(b) The Act does not apply to contracts "for the furnishing of service by radio, telephone, telegraph, or cable companies, subject to the Federal Communications Act of 1934." The Regulations, Article 2 (f).

(c) Contracts for public utility services, including electric light and power, water, steam, and gas, are exempt from the application of the Act.—The Regulations, Article 603 (a).

SECTION 15. CONTRACTS FOR TRANSPORTATION, HAULING, AND DELIVERY

(a) The Public Contracts Act does not apply to "carriage of freight or personnel by vessel, airplane, bus, truck, express, or railway line where published tariff rates are in effect." The Act, Section 9. See also section 16 (b) (2) of this pamphlet. As to the applicability of the Act to hauling operations incidental to the performance of a contract for the manufacture or furnishing of materials, supplies, articles, or equipment, see sections 37 (m) and 40 (i) of this pamphlet.

SECTION 16. PERSONAL SERVICES

(a) A contract exclusively for personal services is not covered by the Act; however, a contract in which services are incidental to or are

an integral part of the manufacture or furnishing of materials, supplies, articles, or equipment is subject to the Act.

(b) The following contracts have been held to be outside the Act:

(1) Laundry and dry-cleaning contracts;

(2) Contracts exclusively for hauling;

(3) Tire repair and tube vulcanizing contracts.

(c) The following contracts have been deemed to fall within the provisions of the Act:

(1) Contracts for photographic reproduction of patent designs;

(2) Contracts for the tabulation of social-security records;

(3) Contracts for the preparation of a manuscript with illustrations and diagrams describing the assembly, servicing and repair of equipment;

(4) Contracts for books, periodicals, magazines, newspapers and the printing of briefs;

(5) Contracts for the rebuilding of shoes;

(6) Contracts for the rebuilding of tools or equipment;

(7) Contracts for the dyeing of cloth;

(8) Contracts for recapping motor vehicle tires;

(9) Contracts for the manufacture of overcoats from wholly owned Government cloth. (See 21 Comp. Gen. 9.)

SECTION 17. RENTAL CONTRACTS

(a) Contracts for the rental of real or personal property are not subject to the Act. Even though a contract for rental of personal property, such as trucks or construction equipment, requires the lessor to furnish operators, it would not be within the coverage of the Act (19 Comp. Gen. 486). Laborers and mechanics employed by contractors or subcontractors on public work would, however, be entitled to the benefits of the Eight-hour Law (37 Stat. 137; 40 U. S. C. 324-325) and in many cases to the benefits of the Davis-Bacon Act (49 Stat. 1011; 40 U. S. C. 276 (a)). See sections 6 and 7 above.

SECTION 18. CONTRACTS TO OVERCOME DEFAULT

(a) Contracts covering purchases against the account of a defaulting contractor where the stipulations required herein were not included in the defaulted contract are exempt from the application of the Act.—Regulations, Article 603 (c).

SECTION 19. CONTRACTS EXCEPTED

(a) In addition to the classes of contracts set out in Regulations, Article 603, the Secretary of Labor, pursuant to the authority granted in section 6 of the Act, has granted temporary exceptions permitting the award of certain other classes of contracts without the inclusion of the representations and stipulations of section 1 of the Act. In-

formation concerning these exceptions can be obtained from the Wage and Hour and Public Contracts Divisions on request.

SECTION 20. BUY AMERICAN ACT

(a) Section 8 of the Public Contracts Act expressly provides that it shall in nowise modify or amend the so-called Buy American Act. A contract subject in part to the Buy American Act is not necessarily exempt from the Public Contracts Act, and it should contain the stipulations of the Public Contracts Act insofar as the American-made goods required under the contract are concerned.

SECTION 21. OTHER STATUTES AND AGREEMENTS AS TO WAGES AND HOURS

(a) The fact that the Fair Labor Standards Act of 1938 (52 Stat. 1060, 29 U. S. C. 201) or any State legislation permits a greater number of working hours without payment of overtime does not affect the obligation of an employer under the Act.

(b) Except as provided in section 1 (c) of the Act (see section 42 (g) of this pamphlet), private agreements respecting hours of work, wage rates, and overtime cannot relieve an employer of his obligation under the Act; e. g., a union contract between any employer and his employees providing for time and one-third overtime does not excuse the payment of time and one-half.

(c) Where the field of application of the Public Contracts Act and the so-called Eight-Hour Law (37 Stat. 137, 40 U. S. C. 324-325) overlap and the provisions of the Public Contracts Act are clearly applicable to complete performance of the contract, the provisions of the Eight-Hour Law should not be included in the contract (19 Comp. Gen. 267). Wherever the two acts overlap, the provisions of the Public Contracts Act take precedence over those of the Eight-Hour Law.

(d) In this connection, it should be noted that section 303 of the Act of September 9, 1940 (54 Stat. 884, 40 U. S. C. 325 (a)), does not affect the daily overtime requirements of the Public Contracts Act. The cited provision has reference to the Eight-Hour Law and merely provides that laborers and mechanics of contractors and sub-contractors engaged on public work may be employed for more than eight hours a day, provided time and one-half the basic rate of pay is paid for all hours in excess of eight a day.

SECTION 22. PERIOD OF COVERAGE

(a) The obligation of a contractor arises on the date when notice of award is sent to him and not on the date the contract is executed. The necessity of compliance with the representations and stipulations of the Act is confined to the period in which the contractor is actually

engaged in the performance of work on the contract, provided the records of the contractor adequately disclose the period during which Government work is being performed.

SECTION 23. INTEGRATED ESTABLISHMENT

(a) When a contractor to whom a contract subject to the Act is awarded operates an integrated establishment or business enterprise which manufactures or produces materials or supplies that are incorporated into or otherwise used in the manufacture or supply of the materials, supplies, articles, or equipment called for by the contract, the Act is applicable to those departments which are engaged in the manufacture or production of the materials or supplies to be so incorporated into or used in the manufacture or processing of the ultimate product to be delivered to the Government, as well as to the employees engaged in the manufacture or processing of that ultimate product. For example:

(1) The processing of the leather and rubber for the shoes supplied under Government contracts subject to the Act is within the purview of the Act and Regulations, and compliance therewith is essential.

(2) The production of sand and gravel for use in the manufacture of ready-mixed concrete required under a Government contract is subject to the Act.

(3) The manufacture of pulp or paper required to be used in the performance of a Government contract subject to the Act for a finished commodity or commodities must likewise be in compliance with the Act.

SECTION 24. STOCK ON HAND

(a) A person may fulfill a contract subject to the Public Contracts Act by supplying material or articles which were manufactured or produced prior to the award of the contract. The Act does not apply retroactively to work performed prior to the award of the contract, but the Act does apply to work performed after the date of the award of the contract on the material or articles supplied to the Government.

(b) However, when a contractor at the time of the award of a contract has on hand a stock of finished articles, partially finished articles, or raw materials and during the performance of the contract produces additional goods of the same kind which are added to the stock pile and commingled with them so as to be unidentifiable from the existing stock previously on hand, those employees engaged in such additional production during the performance of the contract are not covered by the Act if all of the following factors are present:

(1) The contractor customarily maintains a stock pile of material, whether raw, semiprocessed or finished, which is unidentifiable as to the time work was performed on any particular unit in the pile;

(2) Such a stock pile is, at the time of the award and at all times while the contract is in effect, sufficient to fulfill the remaining demands under the Government contract; and

(3) The contract is in fact filled from that very pile.

(c) If these conditions are met, it is not regarded as significant that some unidentifiable part of the goods taken from the pile and used to fill the Government contract was produced after the award of the Government contract. On the other hand, if the goods added to the stock are identifiable as having been produced after the date of the award of the Government contract and such goods are furnished to the Government, employees engaged in their production would be covered by the Act.

(d) In any event, even though a contractor meets the three tests outlined above, he must nevertheless show compliance with the stipulations as to employees who perform work on the articles supplied to the Government at all stages beyond the stock pile. For example, employees who remove articles from the stock, and employees who perform any subsequent work such as further processing of the goods, or inspecting, labeling, packing, or crating the finished articles, are subject to the stipulations.

Part II. Contractors

SECTION 25. TO WHOM CONTRACTS MAY BE AWARDED

(a) The Public Contracts Act requires that every contractor be "a manufacturer of or a regular dealer in the materials, supplies, articles, or equipment to be manufactured or used in the performance of the contract."—The Act, section 1 (a).

SECTION 26. MANUFACTURER

(a) A "manufacturer" is a person who owns, operates, or maintains a factory or establishment that produces on the premises the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.—Regulations, Article 101 (a).

(b) A producer of commodities such as sand, gravel, ore, or coal, will be considered a qualified bidder on Government contracts within the terms of section 1 (a) of the Act.

(c) The Act is applicable to cost-plus-fixed-fee contracts as well as lump-sum contracts if otherwise within the coverage of the Act. This is so even though the contractors may operate Government-owned plants or process Government-owned materials, the title to which is in the Government at all times.

(d) Assembler. A contractor who produces an article by assembling miscellaneous parts, all or some of which have been purchased from others, is a manufacturer within the contemplation of the Act.

SECTION 27. REGULAR DEALER

(a) General definition.

(1) A "regular dealer" is a person who owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles, or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and sold to the public in the usual course of business.—Regulations, Article 101 (b).

(b) Regular dealers in products of particular kinds.

(1) Lumber and timber products. A regular dealer in lumber and timber products, if a wholesale lumber dealer, may be a person who owns, operates, or maintains a place of business in which the materials, supplies, articles, or equipment of the general character described by the specifications and required under the contract are bought for the account of such person, and sold to the public in the usual course of business: *Provided*, That at least more than 50 percent of his business is such purchase and sale of such materials, supplies, articles, or equipment: *And provided further*, That upon all orders to manufacturers for direct shipment to the United States he agrees to insert a notice to the manufacturer to the effect that the supplies are purchased for the United States and that the manufacturer is within the terms of Article 104 of these Regulations requiring compliance with the provisions of the Public Contracts Act.—Regulations, Article 101 (b), as amended April 5, 1939.

(2) Coal. A regular dealer in coal may be a person who owns, operates, or maintains a place of business in which the materials, supplies, articles, or equipment of the general character described by the specifications and required under the contract are bought for the account of such person and sold to users or other trade outlets in the usual course of business in lots of not less than a cargo or railroad carload.—Regulations, Article 101 (b), as amended April 5, 1939.

(3) Machine tools. A regular dealer in machine tools may be a person possessing, through contract or agreement with a manufacturer, the responsibility for selling that manufacturer's products, with respect to a specific territory, and who is authorized by such manufacturer to offer its products and to negotiate and conclude contracts for the furnishing thereof: *Provided*, That upon all orders to manufacturers for direct shipment to the United States he agrees to insert a notice to the manufacturer to the effect that the supplies are purchased for the United States and that the manufacturer is within the terms of Article 104 of these Regulations requiring compliance with

the provisions of the Public Contracts Act.—Regulations, Article 101 (b), as amended April 5, 1939.

(4) Hay, grain, feed, and straw. A regular dealer in hay, grain, feed, or straw may be a person who owns, operates, or maintains a store, warehouse, or other place of business in which the materials, supplies, articles, or equipment of the general character described by the specifications and required under the contract are bought for the account of such person and sold to the public in the usual course of business, and whose principal business is such purchase and sale of such materials, supplies, articles, or equipment.—Regulations, Article 101 (b), as amended April 5, 1939.

(c) Storage in public warehouse.

(1) A person who stores materials, supplies, articles, or equipment in a public warehouse only is not qualified as a regular dealer within the meaning of article 101 (b) of the Secretary's Regulations No. 504 unless such person has a continuing right to specified space in the warehouse.

(2) If, however, a person qualified as a regular dealer is awarded a Government contract that is subject to the Act and makes delivery of the commodities called for under the contract from materials stored in a public warehouse by causing the warehouse to make shipment of the materials to the Government, the employees of the public warehouse are not employees of the contractor within the meaning of the Public Contracts Act, and consequently, are not subject to the Act.

SECTION 28. BROKERS

(a) A broker, if properly authorized, may bid as agent of a person qualified as a "manufacturer" or "regular dealer" within the meaning of the Act and Regulations. Where a broker so bids the contract must issue in the name of the principal.

(b) Brokers from whom foreign-made goods consigned directly to the Government are purchased need not qualify as regular dealers under article 101 (b) of the Secretary of Labor's Regulations No. 504, since the contract itself is not subject to the Act.

SECTION 29. DETERMINATION OF QUALIFICATIONS

(a) The responsibility of determining whether or not a bidder is qualified as a manufacturer or as a regular dealer under the Public Contracts Act rests in the first instance with the contracting agency. However, any decision which the contracting officer might make is subject to review by the Department of Labor which is charged with the administration of the Act. The Department of Labor may determine the qualifications of a bidder in the first instance in the absence of any decision by the contracting officer.

SECTION 30. SUBCONTRACTOR

(a) If a manufacturer buys materials, supplies, articles, or equipment to be used in manufacturing the commodities required by the Government contract, and if it is the regular practice in the industry engaged in the manufacture of the commodities called for by the contract to purchase such materials, supplies, articles, or equipment and not to manufacture them, the vendor of such goods is considered a "subcontractor" and the work performed by him is not deemed subject to the Public Contracts Act. Under like circumstances, the performance of services (for example, machining operations) by one other than the primary contractor, is not considered work subject to the Public Contracts Act.

SECTION 31. SUBSTITUTE MANUFACTURER

(a) When a contractor holding a contract under the Public Contracts Act for the manufacture of materials, supplies, articles, or equipment causes another party to produce all or some of the commodities called for by the contract, the producer of those commodities, not produced by the primary contractor, is deemed to be a "substitute manufacturer."

(b) In the situations described in section 30, above, the employer producing the materials, etc., or performing the services that are required for the performance of the Government contract is considered a "substitute manufacturer" if it is the regular practice in the industry engaged in the manufacture of the commodities called for by the Government contract for members of that industry to do such work themselves rather than to have it done by others.

SECTION 32. LIABILITY OF THE PRIMARY CONTRACTOR

(a) When a contractor undertakes a contract subject to the Public Contracts Act, he assumes an obligation to manufacture or furnish the commodities required under the labor standards of the Act. He may not relieve himself of this obligation merely by shifting the work to another. If, for example, a contractor is awarded a contract subject to the Act as a manufacturer, that contractor is liable jointly with the substitute manufacturer for any acts or omissions on the part of a substitute manufacturer which would have constituted violations of the contractor's contract if he had performed the contract in his own plant and had committed such acts or suffered such omissions in connection with that performance.

(b) When a manufacturer to whom a contract has been awarded subject to the Public Contracts Act is required to show compliance with the Act at the plant or factory of any substitute manufacturer, there

is no requirement specifying that the contractor obtain a formal warranty of compliance from such manufacturers. The means to be utilized by contractors in effecting compliance on the part of others must be left the subject of arrangement between the contractors and such others.

SECTION 33. LIABILITY OF THE SUBSTITUTE MANUFACTURER

(a) Section 2 of the Public Contracts Act imposes liability for "any breach or violation" of the labor standards of the Act on "the party responsible therefor." Since a person is responsible for his own acts or omissions, a substitute manufacturer is a "party responsible" for any acts or omissions which cause a violation of the labor standards of the Public Contracts Act.

SECTION 34. REGULAR DEALER AS AGENT OF THE MANUFACTURER

(a) Whenever a dealer, to whom a contract within the Act and Regulations has been awarded, causes a manufacturer to deliver directly to the Government the materials, supplies, articles, or equipment required under the contract, such dealer will be deemed the agent of the manufacturer in executing the contract. As the principal of such agent the manufacturer will be deemed to have agreed to the stipulations contained in the contract.—Regulations, Article 104.

(b) If a contract for more than \$10,000 is awarded to a regular dealer subject to the Public Contracts Act and he arranges with a manufacturer to produce and ship directly to the Government one or more items involving less than \$10,000, the manufacturer will still be bound by the stipulations contained in the regular dealer's contract.

(c) Article 104 does not apply if the manufacturer ships the goods to the warehouse or other establishment of the regular dealer and the dealer puts the goods in his regular stock, even though the Government contract is filled from that stock.

Part III. Employees

SECTION 35. IN GENERAL

(a) All employees (except those in bona fide executive, administrative, or professional capacities and office, custodial, and maintenance employees) who, after the date of the award, are engaged in any operation preparatory or necessary to or in the performance of the Government contract are subject to the Act.

(b) The application of the Act to a given employee depends upon the work performed by him, and is not governed by the classification or title that he may have, and is not affected by the manner or method of payment to such employee except as provided in Section 39 (a) below. The determination as to whether a specific employee is subject to the Act is a question for decision by the Department of Labor in the light of the specific circumstances surrounding the employment of the given individual.

SECTION 36. EMPLOYEES COVERED BY THE ACT—IN GENERAL

(a) The stipulations shall be deemed applicable only to employees engaged in or connected with the manufacture, fabrication, assembling, handling, supervision, or shipment of materials, supplies, articles, or equipment required under the contract and shall not be deemed applicable to office or custodial employees. Regulations, Article 102.

(b) If no separate records for employees engaged on Government work are maintained, all employees in the plant or department where the work is performed are presumed, until affirmative proof is presented to the contrary, to be engaged on Government work.—Regulations, Article 501 (c).

SECTION 37. EMPLOYEES COVERED BY THE ACT—IN PARTICULAR OCCUPATIONS

The following employees have been held to be employees engaged in or connected with the performance of the Government contract, unless they meet the qualifications of executive, administrative, or professional employees as defined in section 39 (a) below:

(a) Technical workers closely associated with the productive processes involved in the manufacture of goods or commodities required by the Government, such as:

(1) Laboratory technicians engaged in testing materials used in the productive processes necessary to the manufacture of the materials, supplies, articles, or equipment to be supplied to the Government.

(2) Draftsmen engaged in the preparation of drawings, and operators of blueprint machines engaged in making blueprints, required to be supplied to the Government, or prepared subsequent to the date of award for use by the manufacturer in producing the materials, supplies, articles, or equipment to be supplied to the Government.

(3) Workers whose work subsequent to the date of award consists of building models and running tests of materials to be supplied to the Government.

(4) Employees who make special dies and tools necessary for the performance of the contract even though they may be regularly and currently engaged in similar functions on non-Government work.

(5) Tool designers who actually design on paper the tools and instruments to be used in the performance of the Government contract.

(b) Elevator men who operate elevators upon which materials used in the Government contract are moved from one floor to another.

(c) Operators of cranes which are used in moving articles called for in the contract or materials to be used in manufacturing such articles.

(d) Employees who clean machines or who remove waste and other accumulations resulting from the operation of the machinery or other equipment used in the performance of the contract, in order to permit the efficient or continued use of such machines or equipment in the performance of the Government contract.

(e) Employees who prepare instructions for assembly, erection, maintenance, or repair to accompany a commodity required under the contract.

(f) Employees of the contractor who prepare charts and logbooks to record the operation of the apparatus required under the contract, when such charts or logbooks are demanded by the contracting officer or are to be delivered to the Government under the contract.

(g) Shipping employees.

(h) Employees examining or inspecting materials, articles, supplies, or equipment to be supplied to the Government.

(i) Time study men who set the standard times and piece-work operations performed on the Government contract.

(j) Foremen supervising the performance of work on the Government contract, and instructors of employees performing such work. Such employees are covered where their work is directed to the performance of the Government contract, even though they do not operate machines, handle materials, or otherwise perform manual operations in the production of the commodities called for by the Government contract.

(k) Tool crib employees engaged in supplying necessary tools to employees working on the articles required under the Government contract.

(l) Dispatchers and trouble shooters whose duties are to expedite parts and materials to the places and at the times needed for continuance of productive operations on the Government contract.

(m) Truckers in the employ of an employer subject to the Public Contracts Act including those mentioned in section 40, below, are entitled to its benefits if they are engaged in:

(1) Hauling to the plant materials or supplies to be incorporated into or used in the manufacture or processing of the ultimate product called for under the contract.

(2) Intraplant hauling of supplies or materials that are to be used in performance of the contract or of the commodities to be furnished under the contract.

(3) Moving the commodities required under the contract to the Government or to the destination designated by the Government.

SECTION 38. EMPLOYEES NOT COVERED BY THE ACT—IN GENERAL

(a) The stipulations are considered not to apply to employees who are not engaged in or directly connected with the manufacture, fabrication, assembling, handling, supervision, or shipment of materials, supplies, articles, or equipment required under the Government contract.

(b) The stipulations are not considered applicable to employees engaged exclusively on commercial work if such employees are actually segregated and separate records are kept for employees engaged on Government work.

SECTION 39. EMPLOYEES NOT COVERED BY THE ACT—IN PARTICULAR OCCUPATIONS

The stipulations are not considered applicable to the following employees:

(a) Executive, administrative, or professional employees meeting the qualifications set forth in part 541 of the Regulations issued under section 13 (a) (1) of the Fair Labor Standards Act. These regulations define executive, administrative, and professional employees as follows:

Section 541.1 Executive.—The term "employee employed in a bona fide executive * * * capacity" in section 13 (a) (1) of the Fair Labor Standards Act shall mean any employee—

(A) whose primary duty consists of the management of the establishment in which he is employed or of a customarily recognized department or subdivision thereof, and

(B) who customarily and regularly directs the work of other employees therein, and

(C) who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight, and

(D) who customarily and regularly exercises discretionary powers, and

(E) who is compensated for his services on a salary basis at not less than \$30 per week (exclusive of board, lodging, or other facilities), and

(F) whose hours of work of the same nature as that performed by nonexempt employees do not exceed 20 percent of the number of hours worked in the workweek by the nonexempt employees under his direction; provided that this subsection (F) shall not apply in the case of an employee who is in sole charge of an independent establishment or a physically separated branch establishment.

Section 541.2 Administrative.—The term "employee employed in a bona fide * * * administrative * * * capacity" in section 13 (a) (1) of the Fair Labor Standards Act shall mean any employee—

(A) who is compensated for his services on a salary or fee basis at a rate of not less than \$200 per month (exclusive of board, lodging, or other facilities), and

(B) (1) who regularly and directly assists an employee employed in a bona fide executive or administrative capacity (as such terms are defined in these regulations), where such assistance is nonmanual in nature and requires the exercise of discretion and independent judgment; or

(2) who performs under only general supervision, responsible nonmanual office or field work, directly related to management policies or general business operations, along specialized or technical lines requiring special training, experience, or knowledge, and which requires the exercise of discretion and independent judgment; or

(3) whose work involves the execution under only general supervision of special nonmanual assignments and tasks directly related to management policies or general business operations involving the exercise of discretion and independent judgment; or

(4) who is engaged in transporting goods or passengers for hire and who performs, under only general supervision, responsible outside work of a specialized or technical nature requiring special training, experience, or knowledge, and whose duties require the exercise of discretion and independent judgment.

Section 541.3 Professional.—The term "employee employed in a bona fide * * * professional capacity" in section 13 (a) (1) of the Fair Labor Standards Act shall mean any employee who is—

(A) engaged in work—

(1) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work; and

(2) requiring the consistent exercise of discretion and judgment in its performance; and

(3) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time, and

(4) whose hours of work of the same nature as that performed by nonexempt employees do not exceed 20 percent of the hours worked in the workweek by the nonexempt employees; *Provided*, That where

such nonprofessional work is an essential part of and necessarily incident to work of a professional nature, such essential and incidental work shall not be counted as nonexempt work; and

(5) (a) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as distinguished from a general academic education and from an apprenticeship, and from training in the performance of routine mental, manual, or physical processes; or

(b) predominantly original and creative in character in a recognized field of artistic endeavor as opposed to work which can be produced by a person endowed with general manual or intellectual ability and training, and the result of which depends primarily on the invention, imagination, or talent of the employee, and

(B) compensated for his services on a salary or fee basis at a rate of not less than \$200 per month (exclusive of board, lodging, or other facilities); *Provided*, That this subsection (B) shall not apply in the case of an employee who is the holder of a valid license or certificate permitting the practice of law or medicine or any of their branches and who is actually engaged in the practice thereof.

(b) Office employees engaged exclusively in office work relating generally to the operation of the business and not engaged in the production of the materials, supplies, articles, or equipment required by the Government contracts.

(c) Custodial employees whose duties are directed to the maintenance of the plant and who do not perform work on the commodities required by the Government, such as electricians, engineers (engine-room employees), firemen, repair-shop crews, watchmen, maintenance men, telephone operators, and cleaners.

(1) The term "firemen," as used above, is intended to refer generally to those firemen whose activities are confined exclusively to the production of heat for employees within enclosed portions of the contractor's plant and to the production of power for plant operation, and to those engaged solely as precaution against fires and to extinguish fires. Other types of firemen engaged in or connected with the processing of the Government product, such as those firing brick kilns or those firing the boilers for the manufacture of bituminous aggregate, those who stoke furnaces for the production of steam or heat for use *as such* (except where used to produce power for general plant operation) in the production of goods required under the contract would be subject to the Act.

(2) The term "maintenance men," as used above, is intended to refer only to the employees whose duties are confined exclusively to general plant maintenance or to work in the repair shop. Employees who adjust or make minor repairs on machinery on the floor of the plant

in order to permit its efficient or continued use in the performance of the contract are subject to the Act.

(3) The term "cleaners," as used above, is intended to refer to those whose activities are confined exclusively to general plant and grounds cleaning. Cleaners who remove waste or other accumulations resulting from the operation of the machinery or other equipment used in the performance of the contract are subject to the Act. See section 37 (d), above.

(d) Foremen who meet the qualifications of executive, administrative, or professional employees as defined in section 39 (a), above.

(e) Service men who service the contractor's product after delivery to the Government has been completed, and the product has been accepted by the Government.

(f) Workers engaged in general experiments not specifically related to the production of the materials, supplies, articles, or equipment specified in the contract.

(g) Instructors who meet the qualifications of executive, administrative, or professional employees as defined in section 39 (a) above.

(h) Employees engaged exclusively in preparing material orders and requisitions and routing orders through the plant.

(i) Marine workers who are within the exemption set forth in section 13 (a) (3) of the Fair Labor Standards Act and the Administrator's Interpretative Bulletin No. 11, as revised, under that Act. An employee will ordinarily be regarded as employed as a seaman and therefore not subject to the Act and regulations if he performs, as master or subject to the authority, direction, and control of the master aboard a vessel, service which is rendered primarily as an aid in the operation of such vessel as a means of transportation provided he performs no substantial amount of work of a different character. Employees performing such service on vessels navigating inland waters as well as on oceangoing and coastwise vessels are included within this category. Moreover, marine workers on barges or dredges, such as barge captains or workers on dredges out of touch with the shore for periods in excess of 24 hours, are regarded as not subject to the Act and the Regulations.

SECTION 40. COVERAGE OF EMPLOYEES IN SPECIFIC INDUSTRIES

(a) Drug clerks and dye mixers.

(1) Drug clerks or employees engaged in mixing the formulas which form the mixture for the dyes which go into the printing of fabrics under Government contracts are employees manually engaged in manufacture. Since their duties are so directly connected with the processing of the finished materials, they must be classed as productive

employees rather than office or custodial employees, and consequently are subject to the provisions of the Public Contracts Act.

(b) Service-station operators.

(1) Contracts for oil products requiring service-station deliveries must include the stipulations required by the Act; however, the stipulations are not applicable to employees working at the service stations, whether the stations are owned or operated by the contractor or by some other person.

(c) Crude-oil production.

(1) In contracts for the delivery of crude oil, where the contractor is a producer, the Act covers the employees engaged in extracting the oil and preparing it for shipment.

(d) Refined-oil production.

(1) In contracts for gasoline, kerosene, benzine, fuel oil, and other petroleum products in which the contractor is a refiner, the Act applies to employees engaged at the refinery in the refining processes and in preparing the oil for shipment.

(2) Barge crews transporting oil from the refinery to the destination designated by the Government are not considered subject to the Act where their work is of the character described in section 39 (i) above.

(3) Truck drivers employed by the refinery and engaged in the activities described in section 37 (m) above are subject to the Act.

(4) Where the contractor operates a plant in accordance with the requirements of the Public Contracts Act and supplies the Government with oil products from storage at that plant (part of which products were produced by others), the contractor is not required to show that the products obtained from other sources were produced in accordance with the requirements of the Act.

(e) Oil-dealer's employees.

(1) Where the contractor is a dealer, the Act applies to employees at the central distributing plant, including warehousemen, compounders, and chemists testing the lot out of which the Government order is filled, the crews engaged in loading the material in vessels, tank cars, or tank wagons for shipment, and truck drivers engaged in the activities described in section 37 (m) above. However, the contractor is not required to show that the employees at bulk stations, except truck drivers engaged in the activities described in section 37 (m) above, are employed in accordance with the standards of the Act. (Bulk stations as the term is used herein are intermediate points of storage between a central distributing plant and service stations.)

(f) Packing-company employees.

(1) Employees whose work consists of controlling the smoke and temperature in a smokehouse where meats are cured are subject to the Act. However, contracts for perishables as defined in

article 2 (b) of the Regulations are exempt from the Act. See section 11 above.

(g) Importing company employees.

(1) Persons employed by an importer holding a contract subject to the Act who are required to weigh materials for the Government are subject to the Public Contracts Act; but employees of a public warehouse where the materials are stored by the importer, or employees of a public weigher are not subject to the provisions of the Act.

(h) Motor truck and tractor employees.

(1) When the contract is for the manufacture of trucks or tractors the Act does not apply to those employees of the contractor in branch warehouses and service stations engaged in maintaining stocks for repairs and in performing repair services for trucks or tractors.

(i) Truck owners and operators.

(1) Those truckers engaged in the activities described in section 37 (m) above are subject to the Act.

(2) When an employer subject to the Public Contracts Act engages an owner-operator of a truck or other equipment to perform any of the work necessary to the performance of the Government contract, the owner-operator is (prima facie) an employee of such employer.

(3) Section 9 of the Public Contracts Act provides that nothing in the Act shall be construed to apply to carriage of freight by vessel, airplane, bus, truck, express, or railway line where published tariff rates are in effect. Wherever the hauling of the Government commodities is governed by published tariff rates in effect, pursuant to State or Federal law, the trucking operations are not subject to the provisions of the Act.

Part IV. Wages and Hours

SECTION 41. MINIMUM WAGES

(a) In general.

(1) All persons employed by the contractor in the manufacture or furnishing of the materials, supplies, articles, or equipment used in the performance of the contract will be paid without subsequent deduction or rebate on any account, not less than the minimum wages as determined by the Secretary of Labor to be the prevailing minimum wages for persons employed on similar work or in the particular or similar industries or groups of industries currently operating in the locality in which the materials, supplies, articles, or equipment are to be manufactured or furnished under the contract.—The Act, Section 1 (b).

(2) The "stipulation with respect to minimum wages shall apply only to purchases or contracts relating to such industries as have been

the subject matter of a determination by the Secretary of Labor,"—Regulations, Article 1 (b).

(3) Until a determination of the prevailing minimum wage for a particular industry or group of industries has been made by the Secretary of Labor prior to the invitation for bids, the stipulation with respect to wages in section 1 (b) of the Act will be inoperative, as provided in article 1 (b) of the Regulations.—Regulations, Article 1101.

(4) Determinations of prevailing minimum wages or changes therein will be published in the Federal Register and sent to contracting officers by the Public Contracts Division of the Department of Labor. Such determinations will be effective upon the dates fixed therein.—Regulations, Article 1101.

(5) Minimum wage determinations do not apply retroactively to bids invited or to contracts awarded prior to their effective dates.

(b) Government and Non-Government Work in Same Workweek.

(1) Where an employee works for any part of a day in a given workweek on a Government contract for which a minimum wage determination is in effect, he is entitled, in the absence of records segregating this work, to at least the determined minimum wage for all hours worked by him in that workweek. If there is segregation, the determined minimum wage need not be paid for hours spent on non-Government work.

(c) Mixed Work Subject to More than One Wage Rate.

(1) If the employer's records do not segregate the work of an employee subject under one or more wage determinations, to two or more minimum wage rates, the employee must be paid the highest rate for the whole week.

(2) If the employer's records do not segregate the work of an employee part of which is subject to a minimum wage determination and part of which is not subject to a minimum wage determination, the employee must be paid at least the determined minimum wage for the whole week. This is true whether the work not subject to a minimum wage determination is non-Government work or is Government work for which no minimum wage determination is in effect.

(3) If the employer's records do not segregate the work of an employee who performs work under one or more wage determinations requiring the payment of different rates and work not subject to a minimum wage determination, the employee must be paid the highest rate under any applicable wage determination.

(d) Method of Wage Payment.

(1) It is immaterial whether the wage is paid on an hourly, daily, weekly, or other time basis, or on a piece-rate basis, but the amount actually received by the employee must not be less than the minimum wage determined by the Secretary of Labor. As to deductions and rebates, see section 44, below.

(2) Where a piece-rate worker receives the minimum wage for the total hours worked in a given workweek, the employer need not show the payment of the minimum wage for each hour in that week.

(c) Learners.

(1) The Secretary has provided in certain prevailing minimum wage determinations that learners may be employed at subminimum rates in accordance with the applicable regulations issued by the Administrator of the Wage and Hour Division under the Fair Labor Standards Act which were in effect at the time the particular determination was issued or amended. In such cases, the employer must apply to the Administrator for learner certificates in accordance with the Wage and Hour Division regulations.

(2) In the case of any industry subject to a prevailing minimum wage determination which has not been issued or amended in accordance with the above paragraph the following rules apply:

Where a prevailing minimum wage determination permits a tolerance for learners, a learner for the purposes of the determination is a beginning worker demonstrably requiring a special period of training in the performance of a semiskilled or skilled operation. No employee who has served as an experienced operator in an industry may be classified as a learner in that industry, even in an operation new to that employee. Whether an employee is a learner in a particular operation subject to a prevailing minimum wage determination must depend upon the nature of the operation and the previous experience of the employee. No employee who has served longer than the learning period in an industry may be classified as a learner.

(f) Handicapped Workers.

(1) Effective September 15, 1942, the Secretary of Labor amended the prevailing minimum wage determinations in effect on August 12, 1942, to provide that handicapped or supernannuated workers may be employed at subminimum rates in accordance with the then applicable regulations issued by the Administrator of the Wage and Hour Division under the Fair Labor Standards Act. Article 1102 of the Regulations provides for a similar procedure with respect to prevailing minimum wage determinations issued after August 12, 1942.

(2) Effective April 5, 1944, the Secretary of Labor amended article 1102 of the Regulations to adopt section 524.14 of Regulations, part 524, of the Wage and Hour Division for the purposes of the Public Contracts Act as the regulation applicable to handicapped veterans employed under the Vocational Rehabilitation Program of the Veterans Administration.

(g) Apprentices.

(1) The Secretary has provided in certain prevailing minimum wage determinations that apprentices may be employed at submini-

num rates in accordance with the applicable regulations issued by the Administrator of the Wage and Hour Division under the Fair Labor Standards Act, in effect at the time the particular determination was issued or amended.

(2) In the case of any industry subject to a prevailing minimum wage determination which has not been issued or amended in accordance with the above paragraph the following rules shall apply:

Where the prevailing minimum wage determination creates a tolerance in favor of apprenticeship, it contemplates a minimum training period of not less than 4,000 hours (two years). Compliance with the regulations of State or Federal apprenticeship committees is satisfactory evidence of the existence of a bona fide apprenticeship agreement.

(3) Under some circumstances time spent by apprentices in receiving instruction need not be regarded as time worked. See Interpretative Bulletin No. 13, under the Fair Labor Standards Act, paragraph 15, part III.

SECTION 42. OVERTIME COMPENSATION

(a) In general.

(1) No person employed by the contractor in the manufacture or furnishing of the materials, supplies, articles, or equipment used in the performance of the contract shall be permitted to work in excess of eight hours in any one day or in excess of forty hours in any one week; "Provided, That the provisions of this subsection shall not apply to any employer who shall have entered into an agreement with his employees pursuant to the provisions of paragraph 1 or 2 of subsection (b) of section 7 of an Act entitled 'Fair Labor Standards Act of 1938'."—The Act, section 1 (c).

(2) Whenever the Secretary of Labor shall permit an increase in the maximum hours of labor stipulated in the contract, he shall set a rate of pay for any overtime, which rate shall be not less than one and one-half times the basic hourly rate received by any employee affected.—The Act, section 6.

(3) Employees engaged in or connected with the manufacture, fabrication, assembling, handling, supervision, or shipment of materials, supplies, articles, or equipment used in the performance of the contract may be employed in excess of 8 hours in any 1 day or in excess of 40 hours in any 1 week, provided such persons shall be paid for any hours in excess of such limits the overtime rate of pay which has been set therefor by the Secretary of Labor.—Regulations, Article 103.

(4) Until otherwise set by the Secretary of Labor the rate of pay for such overtime shall be one and one-half times the basic hourly rate or piece rate received by the employee.—Regulations, Article 103.

(5) If in any 1 week or part thereof an employee is engaged in work covered by the contractor's stipulations, his overtime shall be computed after 8 hours in any 1 day or after 40 hours in any 1 week during which no single daily total of employment may be in excess of 8 hours without payment of the overtime rate.—Regulations, Article 103.

(6) In the case of any employer who shall have entered into an agreement with his employees pursuant to the provisions of paragraphs 1 or 2 of subsection (b) of section 7 of an Act entitled "The Fair Labor Standards Act of 1938," the foregoing requirements shall be the same except that during the life of the agreement overtime compensation shall be payable only for hours worked in excess of 12 in any one day or in excess of 56 in any one week. If overtime is not paid for hours in excess of 12 in any one day or in excess of 56 in any one week, the employer shall be required to compensate his employees during that week for overtime for hours in excess of eight in any one day or in excess of 40 in any one week. The requirements of section 7 (b) (1) and (2) of the Fair Labor Standards Act are more fully explained in Interpretative Bulletin No. 8 of the Wage and Hour Division.—Regulations, Article 103. (For text of sections 7 (b) (1) and (2) of the Fair Labor Standards Act, see page 52 of this pamphlet.)

(7) Except as otherwise provided in (6), above (see also section 42 (g), below), the overtime rate of time and one-half of the employee's basic hourly rate must be paid for all hours worked in excess of eight per day or 40 per week, whichever method of computation will yield the employee the greater compensation. All hours worked, including those in excess of eight, in any day, must be counted in determining when 40 hours have been worked.

(8) Compliance with the provisions of the Public Contracts Act becomes obligatory when the contractor begins the performance of the contract. The stipulations become inoperative at the time work under the contract is completed. Thus, if the contract is started on Monday and finished on Friday of the same week, the Act does not require that any hours worked by employees on Saturday that may cause their workweek to exceed 40 hours be paid for at the rate of time and one-half their basic hourly rate.

(9) While the employer is not liable for compliance with the Act or contract stipulations for work done on commodities for the commercial trade prior to the day of the workweek that work actually started on the Government contract, he is responsible for observing the overtime requirements for that portion of the first week after the work on the Government contract is started; in other words, he must pay time and one-half for all hours in excess of 8 per day or in excess of 40 in the remaining days of the workweek.

(10) The Act merely requires that persons directly connected with Government contract work shall not work more than 8 hours in any one day or 40 hours in any one week without receiving overtime com-

pensation, but does not specify which days may be workdays. There is no prohibition in the Act against work on Sundays or holidays. This does not affect Federal, State, or local laws, or private agreements on the subject.

(11) While the Act does not affect or require the changing of any private arrangements as to overtime more favorable to the employee than the requirements of the Act, the Department of Labor is not empowered by the Act to enforce such private arrangements.

(b) Workweek as Basis for Calculating Overtime.

(1) The overtime requirements of the Act apply on a workweek basis. The workweek is the unit for calculating both daily and weekly overtime compensation. Whether daily or weekly overtime is payable in any particular workweek depends on which method of computation will yield the employee the greater compensation for that workweek. Where the employee will receive greater compensation for the workweek if his overtime is calculated on the hours in excess of 40 than if it is calculated on the hours worked in excess of eight a day in that week, weekly overtime, and not daily overtime, is required to be paid.

(2) The term "week" as used in the Act, in Regulations, Article 103, and in these Rulings and Interpretations, means a work-week period of 168 consecutive hours (i. e. seven consecutive 24-hour days) beginning at the same hour and on the same calendar day each calendar week. The workweek may begin at any hour or day designated by the employer. While the workweek need not coincide with the calendar week, it is, like the calendar week, a fixed and regularly recurring period. When one workweek ends, another immediately begins. The contractor is, however, not precluded from changing the time at which the workweek begins if the change is intended to be permanent and is not intended to evade the overtime requirements of the Act. As to computation of overtime compensation when the workweek is changed, see section 43 (e), below.

(3) The employer may elect to follow his usual pay roll week or to adopt a new pay roll week for the duration of the contract: *Provided*, That if he elects a new pay roll week he clearly indicates his election on his pay roll records. For example, if the usual pay roll period runs from Monday through Sunday and the employer starts on the Government contract work on Wednesday morning, he may elect to follow his usual pay roll week from Monday through Sunday or to adopt a new pay roll week commencing on any other hour and day he may elect. In either event time and one-half must be paid for all hours worked over 8 per day or 40 per week in the accepted workweek.

(4) In the case of sporadic deliveries of ready-mixed concrete, or sand and gravel, or other such commodity, the workweek of the contractor supplying such commodity to the Government agency will be considered to begin on the day upon which work is commenced on the contract in the calendar week in which the sporadic delivery is made

unless the contractor indicates a preference to have his regular work-week followed. This will not necessitate the keeping of separate records but the records must be kept in such a way as to indicate when deliveries are commenced and completed. The term "sporadic delivery" is used to indicate those deliveries that are relatively infrequent and unpredictable on the part of the contractor. The term is not used to describe deliveries that are regular in their nature even though there may be no deliveries during short periods comprised of a week or several consecutive weeks.

(c) The "Day."

(1) Although the week on which overtime is calculated begins at a designated hour which does not vary from week to week, the "day" upon which daily overtime is computed may vary in accordance with the hours worked by the employee. The first "day" of any week is deemed to commence at the beginning of the week if the employee is at work at that time, and continues for 24 hours. If the employee is not at work at the time the week commences, the first "day" for overtime purposes begins at the time the employee first commences work or reports for work in accordance with the employer's instructions, whichever is the earlier, and continues for 24 hours. The next and each succeeding "day" is a 24-hour period beginning at the expiration of 24 hours from the commencement of the previous "day" if the employee is then at work and continues working, or, if the employee is not then at work, when the employee next begins to work or reports to work in accordance with his employer's instructions, whichever is earlier. The end of the workweek, however, will terminate the last "day" of the week for overtime purposes, even though the 24-hour period may not have expired.

(2) Insofar as daily overtime alone is concerned, all work within the period constituting the "day," as above defined, will be credited to that period, regardless of the calendar days involved.

(d) Computation of Overtime Compensation.—In General.

(1) Whenever an employee works on a Government contract subject to the act for any part of a day in a given pay roll or workweek (after his employer has commenced and before the employer has completed work on the contract), he is entitled to be paid one and one-half times his basic rate of pay for all hours worked in excess of 8 on that day and in excess of 8 on any day in that week, or for all hours worked in excess of 40 in that week, whichever yields the employee the greater compensation. For example, if an employee works 10 hours a day 6 days per week, starting Monday, and works Monday morning on a Government contract, his overtime compensation on a daily basis would be computed as 2 hours overtime compensation for Monday and for each succeeding day, or 12 hours of overtime compensation; but inasmuch as he worked 60 hours in the week, his overtime com-

pensation on a weekly basis would amount to 20 hours at overtime rates for the hours in excess of 40. He must be paid at the applicable overtime rate for 20 hours, unless the payment of overtime compensation for the 12 daily overtime hours yields the employee greater compensation for the workweek than the payment of overtime compensation for the 20 weekly overtime hours. This is so even though the employee is engaged part of the time on commercial work. In this connection, attention is directed to section 42 (e) (7), below.

(2) Subject to the exception noted in section 42 (a) (6), above, an employee may not be required to work in the performance of a contract subject to the Act more than 8 hours in any 24-hour "day" without payment of the overtime rate of time and one-half for all hours worked in excess of eight in that period, unless overtime computed for hours in excess of 40 in the week yields greater compensation for the workweek. The 8-hour period after which the overtime rate must be paid begins at the commencement of the employee's "day," as defined in section 42 (c) (1), above.

(3) The Act requires payment of the overtime rate in all instances where overtime work is permitted, regardless of whether the overtime work is performed for the convenience of the employer or of the employee. The employee's time should be counted so long as he is required to remain at his place of work even though he may not at all times be actively engaged in that work.

(4) The Public Contracts Act contemplates the payment of daily or weekly overtime compensation as extra compensation *in addition* to the straight time compensation for the nonovertime hours in the workweek. In order to comply with the overtime requirements of the Act, therefore, an employer must pay an employee who works overtime both the amount legally due for the nonovertime hours worked in the week (normally computed at the employee's basic rate, where no deductions are involved), and compensation at one and one-half times the employee's basic rate of pay for the overtime hours worked. As noted in subsection (e) (9), below, the employee's basic rate of pay can in no event be less than the legal minimum.

(5) An increase in the rate of pay after the beginning of work on a Government contract subject to the Act cannot be considered as payment in lieu of overtime.

(6) Amounts paid employees for various reasons for hours not worked may not be offset against payments required for overtime. For example, payments for holidays not worked or for absences due to sickness may not be credited against overtime. Such payments, when made, are not intended as compensation for overtime work, but may be made for a variety of reasons—to reward employees for faithfulness, loyalty, and length of service, to bolster personnel morale, to safeguard physical health and well-being of employees by giving

them needed rest and relaxation, and to conform to progressive business practice. There is one exception to the above rule. This is where there is evidence that part or all of the holiday compensation is actually intended to be overtime compensation instead of pay for hours not worked. This may be implied from the conduct of the employees in agreeing to work extra daily hours or weekly hours in return for time off on the holiday, and it may be implied or expressed in an agreement between the employees and the employer. If this is the case, of course, the situation is not one involving holiday pay as such but the usual one of overtime pay. (This ruling supersedes the previous rule as of March 1, 1943, and is not retroactive (see Release R-1943)).

(e) "Basic rate" of pay.

(1) Where an employee is employed at an hourly rate, without other forms of compensation, the "basic rate" of pay upon which his overtime compensation is computed is the specified hourly rate.

(2) If the employee is compensated on a weekly salary basis, his basic or regular hourly rate of pay, on which time and one-half must be paid for overtime work, will be computed by dividing the salary by the regular number of hours worked to earn that salary; or, if no regular number of hours is worked, by the total number of hours worked each week. If the employee works a regular number of hours for the salary, the hourly rate of pay will be a fixed rate, remaining unchanged from week to week. But if the employee works a fluctuating and not a regular number of hours, the hourly rate of pay will be the average hourly rate for the week and will vary from week to week.

(3) If the employee is compensated on a monthly salary basis, the monthly salary is subject to translation into its equivalent weekly wage by multiplying by 12 (the number of months) and dividing by 52 (the number of weeks). A semi-monthly salary will be translated into its equivalent wage by multiplying by 24 and dividing by 52. Once the weekly wage is arrived at, the hourly rate of pay will be calculated as indicated in subsection (e) (2) above. (See Administrator's Interpretative Bulletin Number 4, paragraph 10 under the Fair Labor Standards Act.)

(4) Where an employee is compensated entirely by piece rates, even though he may work at only one piece rate in a week, the employer will be viewed as complying with the overtime pay requirements of the Public Contracts Act if he pays the employee at the piece rate for the straight time hours and if he increases the piece rate by 50 percent for all work performed in the overtime hours in the week. This assumes that the piece rate actually yields the minimum required by law, that there will be no reduction in the applicable piece rate during the overtime hours, and that the employee's actual compensation comprises piece rate earnings exclusively and does not include bonuses or other forms of additional pay of kinds which are required to be

included in ascertaining the regular rate of pay. If the employer uses this method of computing overtime pay, he must keep records which clearly segregate the production during the straight-time hours from the production during the overtime hours. The employer will also be complying with the overtime pay requirements of the Act if, instead of using the method described above, he elects to divide the total piece rate earnings for the week by the number of hours worked in the week in order to obtain an average hourly rate, and pays the employee an additional 50 percent of that rate for each overtime hour. This also assumes that the average rate so used may not be less than the minimum required under the Act.

(5) Where an employee's actual compensation includes not only piece rate earnings but also bonuses or other forms of additional pay of kinds which are required to be included in ascertaining the regular rate of pay, the regular rate of pay upon which the overtime rate is calculated must be computed by dividing total compensation by hours worked. As to bonuses to be included in the computation, see (f), below.

(6) Where the daily earnings of an employee fluctuate from day to day by reason of the payment of piece rates or of performance premiums under an incentive plan, his basic hourly rate is arrived at by dividing his total earnings for a given workweek by the total number of hours worked during that week. In calculating daily overtime compensation, it is not necessary to compute the overtime due an employee on the basis of his average hourly earnings from day to day by dividing his total wages earned each day, in which he works in excess of 8 hours, by the hours worked in the same day.

(7) If in a single workweek an employee is paid two or more different hourly rates, each applicable to a portion of the work performed, and works overtime, his basic hourly rate is determined by dividing his pay for the week by the number of hours worked; except that in cases in which an employee performs in the same workweek several types of work which call for different rates of pay, and the time spent on each type of work is clearly segregated, the employer may elect to compute overtime compensation on the hourly or piece work rate applicable for the work performed during the overtime hours. If under these circumstances the employer elects to pay overtime compensation on the basis of the rate applicable to the work performed in the overtime hours, his records must show the earnings for each type of work performed during both the straight time and overtime hours. If the employer does not so elect, overtime must be paid on the average hourly rate. The records of the employer must show which method of computing overtime compensation he has determined to follow (see Releases Nos. R-1913 and R-1913a). These principles apply both to computation of overtime on a daily basis and to computation of overtime on a weekly basis.

(8) Where an employee, in consideration of his working the night shift, receives additional compensation in the form of a fixed percentage or other differential above the rate paid for the day shift, such additional compensation must be included in determining his basic hourly rate of pay for the purpose of calculating the overtime due him under the Public Contracts Act.

(9) If a minimum wage has been determined, the employee must still receive one and one-half times his basic hourly rates, but in no case less than one and one-half times the minimum wage. The basic hourly rate of an employee, for purposes of determining overtime due under the Act, cannot be lower than the highest applicable minimum wage rate prescribed by law. Thus, it cannot be lower than an applicable minimum wage rate in effect under the Fair Labor Standards Act, even though no minimum wage determination is applicable under the Public Contracts Act.

(f) "Bonuses."

(1) Where an employee's "basic rate" of pay is increased by the payment to him of a "bonus," additional overtime compensation must be paid for those workweeks in the bonus period when overtime was worked, unless provision is made for the inclusion of such overtime compensation in the "bonus" payment itself by calculating it on a percentage-of-total-earnings basis. The types of bonuses which increase an employee's "basic rate" of pay and which do not are explained in Release A-13, copies of which may be secured from any office of the Wage and Hour and Public Contracts Divisions on request.

(2) As explained in Release A-13, referred to above, no additional overtime compensation need be computed and paid on any "bonus" the amount of which is in fact arrived at by taking a predetermined percentage of the total earnings of the individual employees (both straight time and overtime), exclusive of the "bonus." Where the amount paid to each employee is actually based on a percentage of his total earnings, the "bonus" itself includes the payment of both straight time and overtime.

(g) Annual and semi-annual collective bargaining agreements with regard to overtime.

(1) The Act of May 13, 1942 (56 Stat. 277), amended section 1 (c) of the Public Contracts Act to provide an exception from the regular requirement of time and one-half for hours beyond 8 a day or 40 a week in cases falling within section 7 (b), (1) and (2) of the Fair Labor Standards Act. As indicated in the Administrator's Interpretative Bulletin No. 8 under the Fair Labor Standards Act construing that exception, persons employed pursuant to collective bargaining agreements with unions certified as bona fide by the National Labor Relations Board may be employed up to 12 hours a day and 56 hours a week without payment of overtime, provided the agreement stipulates

that the employee shall not be employed more than 1,000 hours during any period of 26 consecutive weeks or, on an annual basis, more than 2,080 hours during any period of 52 consecutive weeks. Under section 7 (b) (2), employment on an annual basis means a guarantee of an annual minimum wage or of employment for 2,080 hours in a year or continuous employment for 52 weeks. (See Interpretative Bulletin No. 8, par. 24.) Such employees will be entitled to overtime compensation for hours beyond 12 a day or 56 a week, rather than 8 a day or 40 a week. (See page 52 of this pamphlet for statutory provisions).

(A) Overtime for learners, handicapped workers, and apprentices.

If a learner, handicapped worker, or apprentice is employed on work subject to the Public Contracts Act, he is entitled to overtime pay for all hours worked in excess of 8 hours in any one day or 40 hours in any one week, whichever yields the greater compensation.

SECTION 43. HOURS WORKED

(a) In general.

(1) The determination as to what constitutes hours worked will be in accordance with the Administrator's views as expressed in Interpretative Bulletin No. 13, as amended, under the Fair Labor Standards Act. As a general rule, hours worked will include (1) all time during which an employee is required to be on duty or to be on the employer's premises or to be at a prescribed work place, and (2) all time during which an employee is suffered or permitted to work whether or not he is required to do so.

(b) Make up time.

(1) Time worked in order to make up for time lost on a holiday, or in anticipation thereof, during another day or week must be included as hours worked in the day and week in which the work is actually performed. (See Interpretative Bulletin No. 4, par. 5, under the Fair Labor Standards Act.) This rule will be applicable even though the work is performed at the request of the employees. By way of illustration, it would apply to a case in which additional hours are worked either in anticipation of or to make up a day not worked between a holiday and a Sunday in order to provide a long holiday week-end.

(c) Training programs.

(1) In order to encourage employee training programs for the achievement of higher skills, attendance at such training programs by employees will not be considered working time requiring compensation by the employer provided such attendance meets the four criteria:

(i) Attendance on the part of the employee must be in fact voluntary. No training program may be considered voluntary if a condition of the employee's continued employment in his present job is attendance at the training program.

(ii) The employee shall not produce any goods or perform any other productive work during such periods of training.

(iii) The training course must be given outside of regular working hours.

(iv) The training course must be intended to train the employee to a new, different, or additional skill, and not intended to make the employee more efficient at doing what he has been doing in his present job. If the course is instituted for the bona fide purpose of preparing for advancement through upgrading the employee to a higher skill than that which he is regularly performing for the employer, this standard will be considered met even though the course incidentally improves in some measure the employee's skill in doing his regular work. (See Releases R-1076 and R-1350.)

(d) Labor-management committees.

(1) Time spent by an employee as a voluntary member of a labor management committee is compensable when meetings are held during his regular working hours, but not when meetings are held at other times. (See Release R-1804.)

(e) Change of workweek.

(1) A change of the workweek from one period of seven consecutive days to another period of seven consecutive days necessarily creates an overlap between the last workweek in the old schedule and the first workweek in the new; that is, certain hours in the "two-week" change-over period fall within both workweeks.

(2) If the hours which fall within both workweeks are hours in which the employee does no work, his statutory compensation for each workweek is, of course, determinable as it would be if no overlap existed.

(3) If, on the other hand, some of the employee's worktime falls within hours which are included in both workweeks, the divisions, as an enforcement policy, require the employee's straight time and overtime compensation to be computed by counting such worktime as "hours worked" in whichever of the two workweeks its inclusion will yield the higher total compensation for both workweeks. After thus determining the workweek to which the overlapping worktime should be allocated, the remaining workweek is treated as one in which the only compensable worktime is that falling exclusively within such workweek and outside the portion which overlaps the other workweek. Subject to this modification, the compensation due an employee for straight time and for overtime on a daily or weekly basis, whichever is appropriate, is to be computed and paid for each workweek as in workweeks when no overlap occurs. This rule, otherwise identified as a crediting rule, applies both under the Fair Labor Standards Act and under the Walsh-Healey Public Contracts Act.

SECTION 44. DEDUCTIONS AND REBATES

(a) In general.

(1) Section 1 (b) of the Public Contracts Act requires the payment of the minimum wages prescribed by the Secretary of Labor "without subsequent deduction or rebate on any account." Nevertheless, under certain circumstances, pay roll deductions are not prohibited by the act. The permissibility of pay roll deductions will be determined in accordance with the principles applicable under the Fair Labor Standards Act. (See Release R-1925.)

(b) Amounts paid to third persons.

(1) In general pay roll deductions are permissible where the amount deducted is paid over to an independent unaffiliated third person pursuant to a voluntary assignment or order of the employee, provided the employer does not derive a profit or benefit directly or indirectly from the deductions. (See Administrator's Interpretative Bulletin No. 3, pars. 15-17, under the Fair Labor Standards Act.)

(c) Amounts retained by employer or affiliate.

(1) In weeks in which no overtime is worked, the Act does not forbid pay roll deductions, the proceeds of which are retained by the employer or any affiliated person, provided the employee receives at least the minimum wage to which he is entitled under the Act. In weeks in which overtime is worked the Act does not forbid such pay roll deductions in an amount not exceeding that which would be permissible in weeks in which no overtime is worked; provided that neither the purpose nor the effect of the deduction is to evade the overtime pay requirements of the Act. In addition, the employer may make pay roll deductions in any amount for the reasonable cost to the employer or an affiliated person, as determined by the Administrator, of furnishing an employee with "board, lodging, or other facilities" when such items are customarily furnished. The determination of reasonable cost will be in accordance with the Administrator's Regulations 531 under the Fair Labor Standards Act. Items such as housing, meals, fuel, and merchandise furnished by the company's store are within the term "board, lodging, or other facilities," whereas such items as tools, miner's lamps, dynamite caps, and other items of a similar nature do not come within the meaning of that phrase.

(2) Further amplification of these principles outlined above may be obtained from the Administrator's Interpretative Bulletin Number 3 under the Fair Labor Standards Act, as modified by Release R-1925.

(d) Rebates.

(1) The principles set forth above as applicable to deductions are likewise applicable to rebates.

Part V. Home Workers

SECTION 45. IN GENERAL

(a) A manufacturer is a person who owns, operates, or maintains a factory or establishment that produces on the premises the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.—Regulations, article 101 (a).

(b) Since the Regulations require that the subject matter of the contract be produced "on the premises," in order for a producer to qualify as a "manufacturer" within the meaning of the stipulations required by section 1 (a) of the Act, it is not permissible to employ home workers in the performance of contracts subject to the Act.

Part VI. Child Labor

SECTION 46. IN GENERAL

(a) No male person under 16 years of age, and no female person under 18 years of age may be employed by the contractor in the manufacture or production or furnishing of any of the materials, supplies, articles, or equipment included in the contract.—The Act, section 1 (d).

Part VII. Convict Labor

SECTION 47. IN GENERAL

(a) No convict labor may be employed by the contractor in the manufacture or production or furnishing of any of the materials, supplies, articles, or equipment included in the contract. The Act, section 1 (d).

(b) The prohibition against the employment of convict labor in section 1 (d) of the Act does not preclude the employment of paroled, pardoned, or discharged criminals.

(c) Contracts negotiated during the recent war with states or territories of the United States, or with corporations, commissions, or authorities wholly owned and controlled by such states or territories for the manufacture or furnishing of materials, supplies, articles, and equipment necessary for war purposes have been exempted from the application of article 1 of the Regulations pursuant to the procedure required under section 6 of the Act (article 603 (e) of the Regulations).

Part VIII. Safety and Health

SECTION 48. INSANITARY, HAZARDOUS, AND DANGEROUS CONDITIONS

(a) No part of such contract may be performed nor will any of the materials, supplies, articles, or equipment to be manufactured or furnished under said contract be manufactured or fabricated in any plants, factories, building, or surroundings or under working conditions which are insanitary or hazardous or dangerous to the health and safety of employees engaged in the performance of said contract.—The Act, section 1 (e).

(b) A pamphlet discussing the health and safety standards required under the Act may be obtained on request to any office of the Wage and Hour and Public Contracts Divisions.

SECTION 49. COMPLIANCE WITH STATE INSPECTION LAWS

(a) Compliance with the safety, sanitary, and factory inspection laws of the State in which the work or part thereof is to be performed is prima facie evidence of compliance with this (section 1 (e)) subsection.—The Act, section 1 (e).

Part IX. Posting

SECTION 50. IN GENERAL

(a) The contractor shall post a copy of the stipulations in a prominent and readily accessible place at the site of the contract work and shall keep such employment records as are required in the regulations under the Act available for inspection by authorized representatives of the Secretary of Labor.—Regulations, Article 1 (g). The posting of the poster furnished by the Department of Labor is compliance with the posting requirement of this Regulation.

(b) Since Regulations, article 1 (g) provides that "the contractor shall post a copy of the stipulations in a prominent and readily accessible place at the site of the contract work," if work on Government contracts is being performed in various departments of a plant and a single poster in the factory is not readily accessible to all employees, then additional copies of the stipulations or of the poster, Public Contracts Form 13, must be posted in the various departments so that all employees working on the contracts will have access to the poster.

Part X. Records

SECTION 51. RECORDS OF EMPLOYMENT

(a) The Regulations.

(1) Every contractor subject to the provisions of the Act and these Regulations shall maintain the following records of employment which shall be available for the inspection and transcription of authorized representatives of the Secretary of Labor:

(a) Name, address, sex, and occupation of each employee covered by the contract stipulations.

(b) Date of birth of each such employee under 19 years of age.

(c) Wage and hour records for each such employee including the rate of wages and the amount paid each pay period, the hours worked each day and each week, and the period during which each such employee was engaged on a Government contract with the number of such contract. Compliance with this subsection shall be deemed complete if wage-and-hour records for all employees in the plant are maintained during the period between the award of any Government contract and the date of delivery of the materials, supplies, articles, or equipment: *Provided*, That where no separate records for employees engaged on Government contracts are maintained, it shall be presumed until affirmative proof is present to the contrary that all employees in the plant, from the date of award of any such contract until the date of delivery of the materials, supplies, articles, or equipment, were engaged on such Government contract.

(2) Such records shall be kept on file for at least 4 years from their last date of entry. Regulations, Article 501.

(b) In addition to the identification numbers of contracts worked on, the wage and hour records in order to comply with article 501 (c) of the Regulations must show the following information:

(1) When each workweek and each workday begins. (As to method of determining the commencement of a day see section 42 (c) above.)

(2) The number of hours worked each workweek and workday.

(3) The basis on which wages are paid.

(4) The basic hourly rate of pay.

(5) Total straight-time wages and total overtime compensation earned each day or each week.

(6) The date of payment and the period covered by payment.

(7) All additions to or deductions from wages paid each pay period.

(8) The total wages paid each pay period.

SECTION 52. RECORDS OF INJURY FREQUENCY RATES

(a) The Regulations.

(1) Every person who is or shall become a party to a Government contract which is subject to the provisions of the Walsh-Healey Public Contracts Act and the Regulations thereunder, or who is performing or shall perform any part of such contract subject to the provisions of such Act or Regulations, shall maintain the records specified below which shall be available for inspection by authorized representatives of the Secretary of Labor:

(a) Records of injury frequency rates as defined in paragraphs

(b) and (c) below, calculated quarterly on a calendar basis commencing the first of January of each year;

(b) The injury frequency rate shall be the number of disabling injuries to all employees per 1,000,000 manhours of exposure, obtained by multiplying the total number of disabling injuries by 1,000,000 and dividing that sum by the total manhours of exposure;

(c) For the purpose of this section (1) "disabling injury" is one which causes disability to any employee extending beyond the day shift during which the injury occurred, (2) "total manhours of exposure" shall be the total manhours actually worked by all employees during the quarter, (3) "employee" shall mean any employee in any department of the factory or establishment, including protection, maintenance, transportation, clerical, office, and sales, regardless of whether such employee is engaged in the performance of a contract subject to this Act.

(2) Such records shall be kept on file for at least four years after the date of entry thereof.—Regulations, Article 502.

SECTION 53. SUFFICIENCY OF RECORDS

(a) It is not necessary for a contractor subject to the Public Contracts Act to maintain any separate and distinct records for the purposes of the Act if his usual records contain the required information.

Part XI. Advertisement and Bids

SECTION 54. ADVERTISEMENTS

(a) "When it is anticipated that invitation for bids will develop contracts in excess of \$10,000 in amount it is proper that the advertisement give notice to bidders that the Act of June 30, 1936, will be applicable to such contract." 16 Comp. Gen. 583.

SECTION 53. QUALIFIED BIDS

(a) All contracts to which the statute is applicable must include the prescribed regulations and stipulations in every instance without any qualification whatever, and any bid which, by qualification, undertakes to avoid compliance with the statute in any way, or by any means, will be subject to rejection. 16 Comp. Gen. 583.

(b) A reservation in a bid submitted by a dealer attempting to exempt a manufacturer who is to deliver directly to the Government from compliance with the Act or Regulations would require the rejection of such a bid. 16 Comp. Gen. 583.

(c) The Regulations of the Secretary concerning the keeping of records are obligatory upon contractors subject to the Act. The taking of an exception to this requirement in a bid for a contract under the Act invalidates the bid. 16 Comp. Gen. 590.

SECTION 56. INCORPORATION OF STIPULATIONS IN CONTRACT

(a) On December 28, 1942, the Secretary of Labor amended article 1 of the Regulations to provide the alternative of incorporating the stipulations and applicable minimum wage determination by reference in invitations to bid, specifications, and contracts, rather than requiring in all cases that the stipulations and minimum wage determination be inserted.

Part XII. Enforcement Methods

SECTION 57. CANCELLATION OF CONTRACTS

(a) Any breach or violation of any of the representations and stipulations in any contract for the purposes set forth in section 1 hereof shall render the party responsible therefore liable to the United States of America for liquidated damages * * * ; and, in addition, the agency of the United States entering into such contract shall have the right to cancel same and to make open-market purchases or enter into other contracts for the completion of the original contract, charging any additional costs to the original contractor.—The Act, section 2.

SECTION 58. COMPLAINTS

(a) Whenever any officer or employee of the United States Government or of any agency thereof has any knowledge of or receives any complaint with respect to a breach or violation of the stipulations required under article 1, he shall transmit such complaint according to the usual practice in his department to the Department of Labor, together with such other information as he has in his possession.—Regulations, Article 1202.

(b) Any employer, employee, labor, or trade organization, or other interested person or organization may report to any office of the Wage and Hour and Public Contracts Divisions, a breach or violation, or apparent breach or violation of the Act, or of any of the rules or regulations prescribed thereunder.

SECTION 59. LIQUIDATED DAMAGES

(a) Any breach or violation of any of the representations and stipulations in any contract for the purpose set forth in section 1 hereof shall render the party responsible therefor liable to the United States of America for liquidated damages in addition to damages for any other breach of such contract, the sum of \$10 per day for each male person under 16 years of age or each female person under 18 years of age, or each convict laborer knowingly employed in the performance of such contract, and a sum equal to the amount of any deductions, rebates, refunds, or underpayment of wages due to any employee engaged in the performance of such contract.—The Act, section 2.

(b) Underpayment of wages includes straight time not paid as well as overtime, whether or not there is a minimum wage, and may be recovered in the event there is any violation, monetary or otherwise, of any of the stipulations required by section 1 of the Act.

SECTION 60. RECOVERY OF LIQUIDATED DAMAGES

(a) Any sums of money due to the United States of America may be withheld from any amounts due on any such contracts or may be recovered in suits brought in the name of the United States of America by the Attorney General thereof.—The Act, section 2.

SECTION 61. PUNISHMENT FOR CONTEMPT

(a) In case of contumacy, failure, or refusal of any person to obey such an order (order of the Secretary of Labor requiring the attendance and testimony of witnesses and the production of evidence under oath, any District Court of the United States or of any Territory or possession or the District Court of the United States for the District of Columbia, within the jurisdiction of which the inquiry is carried on, or within the jurisdiction of which said person who is guilty of contumacy, failure, or refusal is found, or resides, or transacts business, upon the application by the Secretary of Labor or representative designated by him, shall have jurisdiction to issue such person an order requiring such person to appear before him, or representative designated by him, to produce evidence if, as, and when so ordered, and to give testimony relating to the matter under investigation or in question, and any failure to obey such order of the court may be punished by said court as a contempt thereof. The Act, section 5 (Parenthetical material supplied).

SECTION 62. INELIGIBLE LIST

(a) The Secretary of Labor, under the statute, forwards a list to the Comptroller General for distribution to all agencies of the United States containing the names of persons or firms found by the Secretary of Labor to have breached any of the agreements or representations required by this Act. Unless the Secretary of Labor otherwise recommends, no contracts shall be awarded to such persons or firms or to any firm, corporation, partnership, or association in which such persons or firms have a controlling interest until 3 years have elapsed from the date the Secretary of Labor determines such breach to have occurred.—The Act, section 3.

(b) If an employee who testified at a hearing in a matter of alleged violations of the provisions of the Public Contracts Act is discriminated against or refused employment after such hearing, the fact will weigh heavily in the consideration of whether or not the Secretary of Labor will intervene to prevent the operation of Section 3 of the Public Contract Act, which, unless the Secretary so prevents, automatically makes the contractor who has been found to have breached the contract, ineligible to receive Government contracts for a period of 3 years.

SECTION 63. SPECIAL DEPOSIT ACCOUNT

(a) All sums withheld or recovered as deductions, rebates, refunds, or underpayments of wages shall be held in a special deposit account and shall be paid, on order of the Secretary of Labor, directly to the employees who have been paid less than the minimum rates of pay as set forth in such contracts and on whose account such sums were withheld or recovered: *Provided*, That no claims by employees for such payments shall be entertained unless made within 1 year from the date of actual notice to the contractor of the withholding or recovery of such sums by the United States of America.—The Act, section 2.

Part XIII. Exceptions and Exemptions

SECTION 64. IN GENERAL

(a) Upon a written finding by the head of the contracting agency or department that the inclusion in the proposal or contract of the representations or stipulations set forth in section 1 will seriously impair the conduct of Government business, the Secretary of Labor shall make exceptions in specific cases or otherwise when justice or public interest will be served thereby. Upon the joint recommendation of the contracting agency and the contractor, the Secretary of Labor may modify the terms of an existing contract respecting mini-

imum rates of pay and maximum hours of labor as he may find necessary and proper in the public interest or to prevent injustice and undue hardship. The Secretary of Labor may provide reasonable limitations and may make rules and regulations allowing reasonable variations, tolerances, and exemptions to and from any or all provisions of this Act respecting minimum rates of pay and maximum hours of labor or the extent of the application of this Act to contractors, as hereinbefore described. Whenever the Secretary of Labor shall permit an increase in the maximum hours of labor stipulated in the contract, he shall set a rate of pay for any overtime, which rate shall be not less than one and one-half times the basic hourly rate received by any employee affected.—The Act, section 6.

(b) Requests for the exception or exemption of a contract or class of contracts from the inclusion or application of one or more of those stipulations required by article 1 must be made by the head of a contracting agency or department and shall be accompanied with a finding by him setting forth reasons why such inclusion or application will seriously impair the conduct of Government business. Request for the exception or exemption of a stipulation respecting minimum rates of pay and maximum hours of labor contained in an existing contract must be made jointly by the head of the contracting agency and the contractor and shall be accompanied with a joint finding by them setting forth reasons why such exceptions or exemptions are desired.—Regulations, article 601.

(c) Decisions concerning exceptions or exemptions shall be in writing and approved by the Secretary of Labor or officer prescribed by him, originals being filed in the Department of Labor and certified copies shall be transmitted to the Department or agency originating the request, to the Comptroller General, and to the Public Contracts Division of the Department of Labor. Regulations, article 602.

[PUBLIC—No. 846—74TH CONGRESS]

(S. 3055, as amended by Section 13 of Public Law No. 671—76th Congress, Chapter 440—3rd Session, approved June 28, 1940, and by Public Law No. 552—77th Congress, Chapter 306—2nd Session, approved May 13, 1942.)

AN ACT

To provide conditions for the purchase of supplies and the making of contracts by the United States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in any contract made and entered into by any executive department, independent establishment, or other agency or instrumentality of the United States, or by the District of Columbia, or by any corporation all the stock of which is beneficially owned by the United States (all the foregoing being hereinafter designated as agencies of the United States), for the manufacture or furnishing of materials, supplies, articles, and

equipment in any amount exceeding \$10,000, there shall be included the following representations and stipulations:

(a) That the contractor is the manufacturer of or a regular dealer in the materials, supplies, articles, or equipment to be manufactured or used in the performance of the contract;

(b) That all persons employed by the contractor in the manufacture or furnishing of the materials, supplies, articles, or equipment used in the performance of the contract will be paid, without subsequent deduction or rebate on any account, not less than the minimum wages as determined by the Secretary of Labor to be the prevailing minimum wages for persons employed on similar work or in the particular or similar industries or groups of industries currently operating in the locality in which the materials, supplies, articles, or equipment are to be manufactured or furnished under said contract;

(c) That no person employed by the contractor in the manufacture or furnishing of the materials, supplies, articles, or equipment used in the performance of the contract shall be permitted to work in excess of eight hours in any one day or in excess of forty hours in any one week: *Provided*, That the provisions of this subsection shall not apply to any employer who shall have entered into an agreement with his employees pursuant to the provisions of paragraphs 1 or 2 of subsection (b) of section 7 of an Act entitled "Fair Labor Standards Act of 1938".

(d) That no male person under sixteen years of age and no female person under eighteen years of age and no convict labor will be employed by the contractor in the manufacture or production or furnishing of any of the materials, supplies, articles, or equipment included in such contract; and

(e) That no part of such contract will be performed nor will any of the materials, supplies, articles, or equipment to be manufactured or furnished under said contract be manufactured or fabricated in any plants, factories, buildings, or surroundings or under working conditions which are insanitary or hazardous or dangerous to the health and safety of employees engaged in the performance of said contract. Compliance with the safety, sanitary, and factory inspection laws of the State in which the work or part thereof is to be performed shall be prima-facie evidence of compliance with this subsection.

Sec. 2. That any breach or violation of any of the representations and stipulations in any contract for the purposes set forth in section 1 hereof shall render the party responsible therefor liable to the United States of America for liquidated damages, in addition to damages for any other breach of such contract, the sum of \$10 per day for each male person under sixteen years of age or each female person under eighteen years of age, or each convict laborer knowingly employed in the performance of such contract, and a sum equal to the amount of any deductions, rebates, refunds, or underpayment of wages due to any employee engaged in the performance of such contract; and, in addition, the agency of the United States entering into such contract shall have the right to cancel same and to make open-market purchases or enter into other contracts for the completion of the original contract, charging any additional cost to the original contractor. Any sums of

*Proviso added by Public Law No. 552, 77th Congress, Chapter 206, 2d session, approved May 18, 1942.

money due to the United States of America by reason of any violation of any of the representations and stipulations of said contract set forth in section 1 hereof may be withheld from any amounts due on any such contracts or may be recovered in suits brought in the name of the United States of America by the Attorney General thereof. All sums withheld or recovered as deductions, rebates, refunds, or underpayments of wages shall be held in a special deposit account and shall be paid, on order of the Secretary of Labor, directly to the employees who have been paid less than minimum rates of pay as set forth in such contracts and on whose account such sums were withheld or recovered: *Provided*, That no claims by employees for such payments shall be entertained unless made within one year from the date of actual notice to the contractor of the withholding or recovery of such sums by the United States of America.

Sec. 3. The Comptroller General is authorized and directed to distribute a list to all agencies of the United States containing the names of persons or firms found by the Secretary of Labor to have breached any of the agreements or representations required by this Act. Unless the Secretary of Labor otherwise recommends no contracts shall be awarded to such persons or firms or to any firm, corporation, partnership, or association in which such persons or firms have a controlling interest until three years have elapsed from the date the Secretary of Labor determines such breach to have occurred.

Sec. 4. The Secretary of Labor is hereby authorized and directed to administer the provisions of this Act and to utilize such Federal officers and employees and, with the consent of the State, such State and local officers and employees as he may find necessary to assist in the administration of this Act and to prescribe rules and regulations with respect thereto. The Secretary shall appoint, without regard to the provisions of the civil-service laws but subject to the Classification Act of 1923, an administrative officer, and such attorneys and experts, and shall appoint such other employees with regard to existing laws applicable to the employment and compensation of officers and employees of the United States, as he may from time to time find necessary for the administration of this Act. The Secretary of Labor or his authorized representatives shall have power to make investigations and findings as herein provided, and prosecute any inquiry necessary to his functions in any part of the United States. The Secretary of Labor shall have authority from time to time to make, amend, and rescind such rules and regulations as may be necessary to carry out the provisions of this Act.

Sec. 5. Upon his own motion or on application of any person affected by any ruling of any agency of the United States in relation to any proposal or contract involving any of the provisions of this Act, and on complaint of a breach or violation of any representation or stipulation as herein provided, the Secretary of Labor, or an impartial representative designated by him, shall have the power to hold hearings and to issue orders requiring the attendance and testimony of witnesses and the production of evidence under oath. Witnesses shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In case of contumacy, failure, or refusal of any person to obey such an order, any District Court of the United States or of any Territory or possession, or the District

Court of the United States for the District of Columbia,† within the jurisdiction of which the inquiry is carried on, or within the jurisdiction of which said person who is guilty of contumacy, failure, or refusal is found, or resides or transacts business, upon the application by the Secretary of Labor or representative designated by him, shall have jurisdiction to issue to such person an order requiring such person to appear before him or representative designated by him, to produce evidence if, as, and when so ordered, and to give testimony relating to the matter under investigation or in question; and any failure to obey such order of the court may be punished by said Court as a contempt thereof; and shall make findings of fact after notice and hearing, which findings shall be conclusive upon all agencies of the United States, and if supported by the preponderance of the evidence, shall be conclusive in any court of the United States; and the Secretary of Labor or authorized representative shall have the power, and is hereby authorized, to make such decisions, based upon findings of fact, as are deemed to be necessary to enforce the provisions of this Act.

Sec. 6. Upon a written finding by the head of the contracting agency or department that the inclusion in the proposal or contract of the representations or stipulations set forth in section 1 will seriously impair the conduct of Government business, the Secretary of Labor shall make exceptions in specific cases or otherwise when justice or public interest will be served thereby. Upon the joint recommendation of the contracting agency and the contractor, the Secretary of Labor may modify the terms of an existing contract respecting minimum rates of pay and maximum hours of labor as he may find necessary and proper in the public interest or to prevent injustice and undue hardship. The Secretary of Labor may provide reasonable limitations and may make rules and regulations allowing reasonable variations, tolerances, and exemptions to and from any or all provisions of this Act respecting minimum rates of pay and maximum hours of labor or the extent of the application of this Act to contractors, as hereinbefore described. Whenever the Secretary of Labor shall permit an increase in the maximum hours of labor stipulated in the contract, he shall set a rate of pay for any overtime, which rate shall be not less than one and one-half times the basic hourly rate received by any employee affected: *Provided*, That whenever in his judgment such course is in the public interest, the President is authorized to suspend any or all of the representations and stipulations contained in Section 1 of this Act.*

Sec. 7. Whenever used in this Act, the word "person" includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

Sec. 8. The provisions of this Act shall not be construed to modify or amend title III of the Act entitled "An Act making appropriations for the Treasury and Post Office Departments for the fiscal year ending June 30, 1934, and for other purposes," approved May 3, 1933 (commonly known as the Buy American Act), nor shall the provisions of this Act be construed to modify or amend the Act entitled "An Act relating to the rate of wages for laborers and

*Act of June 25, 1936, c. 804, 49 Stat. 1921, had changed the name of the Supreme Court of the District of Columbia to the "District Court of the United States for the District of Columbia."

†Provision added by Public Law No. 671, Sec. 13, 76th Congress, Chapter 440, 8d session, approved June 28, 1940.

mechanics employed on public buildings of the United States and the District of Columbia by contractors and subcontractors, and for other purposes," approved March 3, 1931 (commonly known as the Bacon-Davis Act), as amended from time to time, nor the labor provisions of title II of the National Industrial Recovery Act, approved June 16, 1933, as extended, or of section 7 of the Emergency Relief Appropriation Act, approved April 8, 1935; nor shall the provisions of this Act be construed to modify or amend the Act entitled "An Act to provide for the diversification of employment of Federal prisoners, for their training and schooling in trades and occupations, and for other purposes," approved May 27, 1930, as amended and supplemented by the Act approved June 23, 1934.

Sec. 9. This Act shall not apply to purchases of such materials, supplies, articles, or equipment as may usually be bought in the open market; nor shall this Act apply to perishables, including dairy, livestock and nursery products, or to agricultural or farm products processed for first sale by the original producers; nor to any contracts made by the Secretary of Agriculture for the purchase of agricultural commodities or the products thereof. Nothing in this Act shall be construed to apply to carriage of freight or personnel by vessel, airplane, bus, truck, express, or railway line where published tariff rates are in effect or to common carriers subject to the Communications Act of 1934.

SEPARABILITY CLAUSE

Sec. 10. If any provision of this Act, or the application thereof to any persons or circumstances, is held invalid, the remainder of the Act, and the application of such provisions to other persons or circumstances, shall not be affected thereby.

Sec. 11. This Act shall apply to all contracts entered into pursuant to invitations for bids issued on or after ninety days from the effective date of this Act: *Provided, however*, That the provisions requiring the inclusion of representations with respect to minimum wages shall apply only to purchases or contracts relating to such industries as have been the subject matter of a determination by the Secretary of Labor.

Approved, June 30, 1936.

[PUBLIC—No. 629—76th Congress]

(Chapt. 304, 54 Stat. 394; 34 U. S. C. Sec. 408K)

SECTION 8. The construction, alteration, furnishing, or equipping of any naval vessel authorized by this Act, or the construction, alteration, furnishing, or equipping of any naval vessels with funds from any appropriation available for such purposes, contracts for which are made after June 30, 1940, shall be in accordance with the provisions of Public Law Numbered 546, Seventy-fourth Congress, approved June 30, 1936, unless such course in the judgment of the President of the United States, should not be in the interest of national defense.

PARAGRAPH 3 OF SECTION 7 (A) AND PARAGRAPHS (1) AND (2) OF SECTION 7 (B) OF THE FAIR LABOR STANDARDS ACT OF 1938

(Public Law No. 718, 75th Congress, chapter 676, 2d Session)

Sec. 7 (a) No employer shall, except as otherwise provided in this Section, employ any of his employees who is engaged in commerce or in the production of goods for commerce—

(3) for a workweek longer than forty hours after the expiration of the second year from such date (October 24, 1938), unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

(b) No employer shall be deemed to have violated subsection (a) by employing any employee for a workweek in excess of that specified in such subsection without paying the compensation for overtime employment prescribed therein if such employee is so employed:

(1) in pursuance of an agreement, made as a result of collective bargaining by representatives of employees certified as bona fide by the National Labor Relations Board, which provides that no employee shall be employed more than one thousand hours during any period of twenty-six consecutive weeks,

(2) on an annual basis in pursuance of an agreement with his employer, made as a result of collective bargaining by representatives of employees certified as bona fide by the National Labor Relations Board, which provides that the employee shall not be employed more than two thousand and eighty hours during any period of fifty-two consecutive weeks, or

and if such employee receives compensation for employment in excess of 12 hours in any workday, or for employment in excess of 56 hours in any workweek, as the case may be, at a rate not less than one and one-half times the regular rate at which he is employed.

No. 504 (As amended to August, 1945).—REGULATIONS PRESCRIBED BY THE SECRETARY OF LABOR UNDER PUBLIC ACT NO. 846, SEVENTY-FOURTH CONGRESS.

(SERIES A)

By virtue of the authority vested in the Secretary of Labor by section 4 of the act entitled "An act to provide conditions for the purchase of supplies and the making of contracts by the United States, and for other purposes" (act of June 30, 1936, Public, No. 846, 74th Cong.), and in order to establish uniform procedure under said act, the following Regulations are hereby prescribed:

PART I.—CONTRACT STIPULATIONS

ARTICLE 1 (Insertion of Stipulations).—Except as hereinafter directed, in every contract made and entered into by an executive department, independent establishment, or other agency or instrumentality of the United States, or by the District of Columbia, or by any corporation all the stock of which is beneficially owned by the United States, for the manufacture or furnishing of materials, supplies, articles, and equipment, with respect to which invitations for bids are issued on or after September 28, 1936, the contracting officer shall cause to be inserted or incorporated by reference in such invitation or the specifications and in such contract, the following stipulations:

Representations and stipulations pursuant to Public Act No. 846, Seventy-fourth Congress:

(a) The contractor is the manufacturer of or a regular dealer in the materials, supplies, articles, or equipment to be manufactured or used in the performance of the contract.

(b) All persons employed by the contractor in the manufacture or furnishing of the materials, supplies, articles, or equipment used in the performance of the contract will be paid, without subsequent deduction or rebate on any account,

not less than the minimum wages as determined by the Secretary of Labor to be the prevailing minimum wages for persons employed on similar work or in the particular or similar industries or groups of industries currently operating in the locality in which the materials, supplies, articles, or equipment are to be manufactured or furnished under the contract: *Provided, however,* That this stipulation with respect to minimum wages shall apply only to purchases or contracts relating to such industries as have been the subject matter of a determination by the Secretary of Labor.

(c) No person employed by the contractor in the manufacture or furnishing of the materials, supplies, articles, or equipment used in the performance of the contract shall be permitted to work in excess of 8 hours in any 1 day or in excess of 40 hours in any 1 week unless such person is paid such applicable overtime rate as has been set by the Secretary of Labor: *Provided, however,* That the provisions of this stipulation shall not apply to any employer who shall have entered into an agreement with his employees pursuant to the provisions of paragraphs 1 or 2 of subsection (b) of section 7 of an act entitled "The Fair Labor Standards Act of 1938"; *Provided further,* That in the case of such an employer, during the life of the agreement referred to, the applicable overtime rate set by the Secretary of Labor shall be paid for hours in excess of 12 in any 1 day or in excess of 56 in any 1 week and if such overtime is not paid, the employer shall be required to compensate his employees during that week at the applicable overtime rate set by the Secretary of Labor for hours in excess of 8 in any 1 day or in excess of 40 in any 1 week.

(d) No male person under 16 years of age and no female person under 18 years of age and no convict labor will be employed by the contractor in the manufacture or production or furnishing of any of the materials, supplies, articles, or equipment included in the contract.

(e) No part of the contract will be performed nor will any of the materials, supplies, articles, or equipment to be manufactured or furnished under said contract be manufactured or fabricated in any plants, factories, buildings, or surroundings or under working conditions which are insanitary or hazardous or dangerous to the health and safety of employees engaged in the performance of the contract. Compliance with the safety, sanitary, and factory inspection laws of the State in which the work or part thereof is to be performed shall be prima-facie evidence of compliance with this subsection.

(f) Any breach or violation of any of the foregoing representations and stipulations shall render the party responsible therefor liable to the United States of America for liquidated damages, in addition to damages for any other breach of the contract, in the sum of \$10 per day for each male person under 16 years of age or each female person under 18 years of age, or each convict laborer knowingly employed in the performance of the contract, and a sum equal to the amount of any deductions, rebates, refunds, or underpayment of wages due to any employee engaged in the performance of the contract; and, in addition, the agency of the United States entering into the contract shall have the right to cancel same and to make open-market purchases or enter into other contracts for the completion of the original contract charging any additional cost to the original contractor. Any sums of money due to the United States of America by reason of any violation of any of the representations and stipulations of the contract as set forth herein may be withheld from any amounts due on the contract or may be recovered in a suit brought in the name of the United States of America by the Attorney General thereof. All sums withheld or recovered as deductions, rebates, refunds, or underpayments of wages shall be held in a special deposit account and shall be paid, on order of the Secretary of Labor, directly to the employer who has been paid less than minimum rates of pay as set forth in such contracts and on whose account such sums were withheld or recovered: *Provided,* That no claims by employees for such payments shall be entertained unless made within 1 year from the date of actual notice to the contractor of the withholding or recovery of such sums by the United States of America.

(g) The contractor shall post a copy of the stipulations in a prominent and readily accessible place at the site of the contract work and shall keep such employment records as are required in the Regulations under the act available for inspection by authorized representatives of the Secretary of Labor.

(h) The foregoing stipulations shall be deemed inoperative if this contract is for a definite amount not in excess of \$10,000.

Arr. 2 (Statutory Exemptions).—Inclusion of the stipulations herein enumerated is not required in the following instances:

(c) Where the contracting officer is authorized by the express language of a statute to purchase "in the open market," or where a purchase of articles, supplies, materials or equipment, either in being or virtually so, is made without advertising for bids under circumstances bringing such purchase within the exception to the General Purchase Statute, R. S. 3704, that is, where immediate delivery is required by the public exigency;

(b) Where the contract relates to perishables, including dairy, livestock and nursery products; ("perishables" cover products subject to decay or spoilage and not products canned, salted, smoked, or otherwise preserved);

(c) Where the contract relates to agricultural or farm products processed for first sale by the original producers;

(d) Where the contract is by the Secretary of Agriculture for the purchase of agricultural commodities or the products thereof;

(e) Where the contract is with a common carrier for carriage of freight or personnel by vessel, airplane, bus, truck, express, or railway line, where published tariff rates are in effect;

(f) Where the contract is for the furnishing of service by radio, telephone, telegraph, or cable companies, subject to the Federal Communications Act of 1934.

PART II.—ADMINISTRATIVE REGULATIONS

ART. 101. (Manufacturer or Regular Dealer).—A bidder or contractor shall be deemed to be a "manufacturer" or "regular dealer" within the meaning of the stipulation required by section 1 (a) of the act and article I (a) of these Regulations if he falls within one of the following categories:

(a) A manufacturer is a person who owns, operates, or maintains a factory or establishment that produces on the premises the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.

(b) A regular dealer is a person who owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles, or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and sold to the public in the usual course of business.

(1) A regular dealer in lumber and timber products, if a wholesale lumber dealer, may be a person who owns, operates, or maintains a place of business in which the materials, supplies, articles, or equipment of the general character described by the specifications and required under the contract are bought for the account of such person and sold to the public in the usual course of business; *Provided*, That at least more than 50 percent of his business is such purchase and sale of such materials, supplies, articles, or equipment; and, *Provided further*, That upon all orders to manufacturers for direct shipment to the United States he agrees to insert a notice to the manufacturer to the effect that the supplies are purchased for the United States and that the manufacturer is within the terms of article 104 of these Regulations requiring compliance with the provisions of the Public Contracts Act.

(2) A regular dealer in coal may be a person who owns, operates, or maintains a place of business in which the materials, supplies, articles, or equipment of the general character described by the specifications and required under the contract are bought for the account of such person and sold to users or other trade outlets in the usual course of business in lots of not less than a cargo or railroad carload.

(3) A machine tool dealer may be a person possessing, through contract or agreement with a manufacturer, the responsibility for selling that manufacturer's products, with respect to a specific territory and who is authorized by such manufacturer to offer its products and to negotiate and conclude contracts for the furnishing thereof; *Provided*, That upon all orders to manufacturers for direct shipment to the United States he agrees to insert a notice to the manufacturer to the effect that the supplies are purchased for the United States and that the manufacturer is within the terms of article 104 of these Regulations requiring compliance with the provisions of the Public Contracts Act.

(4) A regular dealer in hay, grain, feed, or straw may be a person who owns, operates, or maintains a store, warehouse, or other place of business in which the materials, supplies, articles, or equipment of the general character described

by the specifications and required under the contract are bought for the account of such person and sold to the public in the usual course of business, and whose principal business is such purchase and sale of such material, supplies, articles, or equipment.

Except as hereinafter provided, every bid received from any bidder who does not fall within one of the foregoing categories shall be rejected by the contracting officer.

Whenever justice and the public interest will be served, bids for a contract or class of contracts will be exempted from the foregoing requirement by the Secretary of Labor upon the request of the head of the contracting agency or department when accompanied by his finding of fact that it will be so difficult to obtain satisfactory bids for the contract or class of contracts under the stipulated restrictions, that the conduct of the Government business will be seriously impaired.

ART. 102 (Employees Affected).—The stipulations shall be deemed applicable only to employees engaged in or connected with the manufacture, fabrication, assembling, handling, supervision, or shipment of materials, supplies, articles, or equipment required under the contract and shall not be deemed applicable to office or custodial employees.

ART. 103 (Overtime).—Employees engaged in or connected with the manufacture, fabrication, assembling, handling, supervision, or shipment of materials, supplies, articles, or equipment used in the performance of the contract may be employed in excess of 8 hours in any 1 day or in excess of 40 hours in any 1 week, provided such persons shall be paid for any hours in excess of such limits the overtime rate of pay which has been set therefor by the Secretary of Labor.

Until otherwise set by the Secretary of Labor the rate of pay for such overtime shall be one and one-half times the basic hourly rate or piece rate received by the employee.

If in any 1 week or part thereof an employee is engaged in work covered by the contractor's stipulations, his overtime shall be computed after 8 hours in any 1 day or after 40 hours in any 1 week during which no single daily total of employment may be in excess of 8 hours without payment of the overtime rate.

In the case of any employer who shall have entered into an agreement with his employees pursuant to the provisions of paragraphs 1 or 2 of subsection (b) of section 7 of an act entitled "The Fair Labor Standards Act of 1938," the foregoing requirements shall be the same except that during the life of the agreement overtime compensation shall be payable only for hours worked in excess of 12 in any 1 day or in excess of 56 in any 1 week. If overtime is not paid for hours in excess of 12 in any 1 day or in excess of 56 in any 1 week, the employer shall be required to compensate his employees during that week for overtime for hours in excess of 8 in any 1 day or in excess of 40 in any 1 week. The requirements of section 7 (b) 1 and 2 of the Fair Labor Standards Act are more fully explained in Interpretative Bulletin No. 8 of the Wage and Hour Division.

ART. 104 (Dealer as Agent of Undisclosed Principal).—Whenever a dealer, to whom a contract within the Act and Regulations has been awarded, causes a manufacturer to deliver directly to the Government the materials, supplies, articles, or equipment required under the contract, such dealer will be deemed the agent of the manufacturer in executing the contract. As the principal of such agent the

manufacturer will be deemed to have agreed to the stipulations contained in the contract.

Arr. 201. (Breach of Stipulations).—Whenever the Department of Labor notifies the head of a contracting agency that a contractor is liable for liquidated damages by reason of a breach of stipulations as provided in section 2 of the act, there shall be withheld from any balance due under the contract such amount as may be necessary to satisfy such liability pending final disposition of the case.

Whenever a final determination of a breach of stipulation is made, the Secretary of Labor will furnish to the contracting agency a copy of the findings and decision with such recommendations as will assist the contracting agency in determining whether or not the contract should be canceled for such breach.

Arr. 501 (Records of Employment).—Every contractor subject to the provisions of the act and these Regulations shall maintain the following records of employment which shall be available for the inspection and transcription of authorized representatives of the Secretary of Labor:

(a) Name, address, sex, and occupation of each employee covered by the contract stipulations.

(b) Date of birth of each such employee under 16 years of age.

(c) Wage and hour records for each such employee including the rate of wages and the amount paid each pay period, the hours worked each day and each week, and the period during which each such employee was engaged on a Government contract with the number of such contract. Compliance with this subsection shall be deemed complete if wage-and-hour records for all employees in the plant are maintained during the period between the award of any Government contract and the date of delivery of the materials, supplies, articles, or equipment: *Provided*, That where no separate records for employees engaged on Government contracts are maintained, it shall be presumed until affirmative proof is presented to the contrary that all employees in the plant, from the date of award of any such contract until the date of delivery of the materials, supplies, articles or equipment, were engaged on such Government contract.

Such records shall be kept on file for at least 4 years from their last date of entry.

Arr. 502 (Records of Injury Frequency Rates).—Every person who is or shall become a party to a Government contract which is subject to the provisions of the Walsh-Healey Public Contracts Act and the Regulations thereunder, or who is performing or shall perform any part of such contract subject to the provisions of such Act or Regulations, shall maintain the records specified below which shall be available for inspection by authorized representatives of the Secretary of Labor;

(a) Records of injury frequency rates as defined in paragraphs (b) and (c) below, calculated quarterly on a calendar basis commencing the first of January of each year;

(b) The injury frequency rate shall be the number of disabling injuries to all employees per 1,000,000 man-hours of exposure, obtained by multiplying the total number of disabling injuries by 1,000,000 and dividing that sum by the total man-hours of exposure;

(c) For the purpose of this section (1) "disabling injury" is one which causes disability to any employee extending beyond the day or shift during which the injury occurred, (2) "total man-hours of exposure" shall be the total man-hours actually worked by all employees during the quarter, (3) "employee" shall mean any employee in any department of the factory or establishment, including protection, maintenance, transportation, clerical, office and sales, regardless of

whether such employee is engaged in the performance of a contract subject to this Act.

Such records shall be kept on file for at least four years after the date of entry thereof.

Arr. 601 (Requests for Exceptions and Exemptions).—Request for the exception or exemption of a contract or class of contracts from the inclusion or application of one or more of those stipulations required by article 1 must be made by the head of a contracting agency or department and shall be accompanied with a finding by him setting forth reasons why such inclusion or application will seriously impair the conduct of Government business.

Request for the exception or exemption of a stipulation respecting minimum rates of pay and maximum hours of labor contained in an existing contract must be made jointly by the head of the contracting agency and the contractor and shall be accompanied with a joint finding by them setting forth reasons why such exception or exemption is desired.

All requests for exceptions or exemptions shall be transmitted to the Public Contracts Division of the Department of Labor.

Arr. 602 (Decisions Concerning Exceptions and Exemptions).—Decisions concerning exceptions and exemptions shall be in writing and approved by the Secretary of Labor or officer prescribed by him, originals being filed in the Department of Labor, and certified copies shall be transmitted to the department or agency originating the request, to the Comptroller General, and to the Procurement Division of the Treasury. All such decisions shall be promulgated to all contracting agencies by the Public Contracts Division of the Department of Labor.

Arr. 603 (Administrative Exemptions).—The following classes of contracts have been exempted from the application of article 1 of these Regulations pursuant to the procedure required under section 6 of the act:

(a) Contracts for public utility services including electric light and power, water, steam, and gas;

(b) Contracts which are to be performed outside the geographic limits of the United States, its territories, and the District of Columbia, except where such performance requires a shipment from within such geographic limits;

(c) Contracts covering purchases against the account of a defaulting contractor where the stipulations required herein were not included in the defaulted contract.

(d) Every "Emergency Plant Facilities Contract" in the form or substantially the form approved by the Advisory Commission to the Council of National Defense and published in the Federal Register on October 19, 1940, 5 F. R. 4147-4151.

(e) Contracts negotiated during the present war with States or Territories of the United States, or with corporations, commissions or authorities wholly owned and controlled by such States or Territories for the manufacture or furnishing of materials, supplies, articles and equipment necessary for war purposes.

Arr. 701 (Definition of "Person").—Whenever used in these Regulations, the word "person" includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

Arr. 1101 (Minimum Wages).—Until a determination of the prevailing minimum wage for a particular industry or group of industries has been made by the Secretary of Labor prior to the invitation for bids, the stipulation with respect to wages in section 1 (b) of the act will be inoperative as provided in article 1 (b) of these Regulations.

Determinations of prevailing minimum wages or changes therein will be published in the Federal Register and sent to contracting officers by the Public Contracts Division of the Department of Labor. Such determinations will be effective upon the dates fixed therein.

Arr. 1102 (**Tolerance for Handicapped Workers**).—Workers whose earning capacity is impaired by age or physical or mental deficiency or injury may be employed either by commercial establishments or as handicapped clients in sheltered workshops at wages lower than the prevailing minimum wages applicable under section 1 (b) of the Public Contracts Act upon the same terms and conditions as are prescribed for the employment of handicapped persons and of handicapped clients in sheltered workshops under section 14 of the Fair Labor Standards Act of 1938, c. 676, 52 Stat. 1060, 29 U.S.C. sec. 201, by the regulations of the Administrator of the Wage and Hour Division of the Department of Labor (Title 29, Chapter V, Code of Federal Regulations, Parts 524 and 525), which are hereby adopted as the regulations governing employment of handicapped persons and of handicapped clients in sheltered workshops under the Public Contracts Act.

Any certificate issued by the Administrator of the Wage and Hour Division, pursuant to such regulations, authorizing the employment of a handicapped worker under the Fair Labor Standards Act shall constitute authorization for the employment of that worker under the Public Contracts Act in accordance with the terms of the certificate.

The Administrator of the Wage and Hour Division is authorized to issue certificates under the Public Contracts Act for the employment of handicapped worker not subject to the Fair Labor Standards Act or subject to different minimum rates of pay under the two Acts, at appropriate rates of compensation and in accordance with the standards and procedures prescribed by the applicable regulations issued under the Fair Labor Standards Act.*

Arr. 1201 (**Reports of Contracts Awarded**).—Whenever the contracting officer shall award a contract in which the stipulations required under article 1 are operative, he shall furnish the Department of Labor in quadruplicate or forms provided for this purpose the information specified by such form.

Arr. 1202 (**Complaints**).—Whenever any officer or employee of the United States Government or of any agency thereof has any knowledge of or receives any complaint with respect to a breach or violation of the stipulations required under article 1, he shall transmit such complaint according to the usual practice in his department to the Department of Labor together with such other information as he has in his possession.

Arr. 1203 (**Other Contracts**).—Nothing in these Regulations shall be construed as impairing the authority possessed by any contracting agency to require labor standards in contracts not covered by this act.

*Amended, effective April 5, 1944, to adopt for the purposes of the Public Contracts Act, the regulation applicable to handicapped veterans employed under the Vocational Rehabilitation Program of the Veterans Administration; Sec. 524.14 of Regulations Part 524, issued under the Fair Labor Standards Act.

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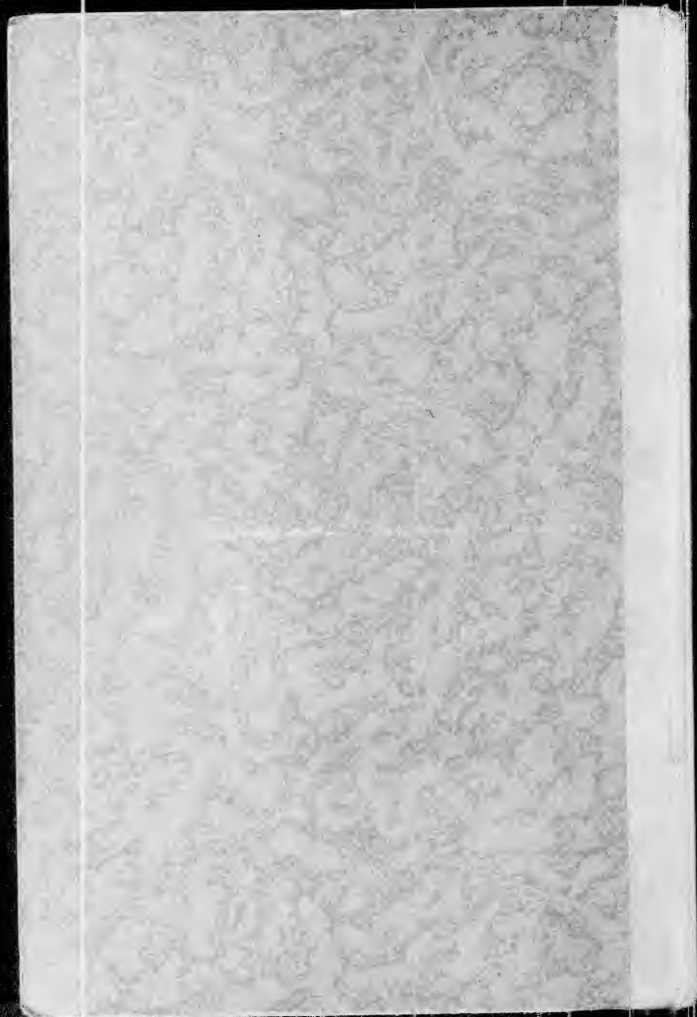
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